

Nancy Kline, Superintendent of Schools

THE SCHOOL BOARD OF MARTIN COUNTY, FLORIDA



500 East Ocean Blvd • Stuart, Florida 34994 • Telephone (772) 219-1200 Ext: 30200 • Facsimile: (772) 219-1231

AGENDA SPECIAL SCHOOL BOARD MEETING

Tuesday, September 11, 2012 – 9:00 a.m.

School Board Meeting Room

500 E. Ocean Boulevard

Stuart, FL 34994

Call to Order by the Chairman and Pledge of Allegiance to the Flag of the United States

1. Adoption of the Agenda
2. Private Attorney-Client Session Regarding Mershon vs. School Board of Martin County, Florida (P. 3 – P. 4)
3. Approve Martin County High School Auditorium Renovations AE Fee Approval (P. 5 – P. 24)
4. Approve Personnel Recommendations (P. 25 – P. 30)

NOTICE OF RIGHT TO JUDICIAL REVIEW:

A party who is adversely affected by this Final order is entitled to Judicial review pursuant to Section 120.68 Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the School Board Clerk and a second copy accompanied by filing fees prescribed by law, with the District Court, Fourth District. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed accurately and completely preserve all testimony in the proceedings, and, on the request of any party, it shall make a full or partial transcript available at no more than actual costs.

Accommodations are available for persons with special needs. Please call 219-1200 X 30425 for assistance.

School Board Members: Dr. David L. Anderson – Maura Barry-Sorenson – Michael Busha - Laurie Gaylord – Susan J. Hershey
Student Representative: Rachel Ethridge

“An Equal Opportunity Agency”

September 11, 2012
Special School Board Meeting



UPCOMING MEETING SCHEDULE

Meetings are held in the School Board Meeting Room unless otherwise noted

REGULAR MEETINGS

Tuesday, September 18, 2012 – 6:00 p.m.

Tuesday, October 16, 2012 – 6:00 p.m.

ANNUAL/REGULAR MEETING

Tuesday, November 20, 2012 – 6:00 p.m.

SPECIAL MEETING

Tuesday, September 11, 2012 – 9:00 a.m.

JOINT MEETINGS

Tuesday, January 8, 2013 – 9:00 a.m. to 12:00 p.m. (City of Stuart Chair) – *Blake Library*

Tuesday, June 18, 2013 – 9:00 a.m. – 12:00 p.m. (School Board Chair) – *Blake Library*

MEMORANDUM

TO: School Board Members

CC: Nancy Kline, Superintendent

FROM: Robert L. Kilbride, Interim School Board Attorney

DATE: September 6, 2012

RE: Mershon v. MCSD lawsuit
Request for private attorney-client session

I have requested a meeting with the School Board to discuss litigation strategies and expenditures and to receive direction for our counsel as authorized by Section 286.011(8), Florida Statutes. Mr Allen Sang, Esq. will be prepared to explain the status of the case, discuss strategies and seek direction from the Board under Section 286.011(8). That section imposes a number of requirements on private attorney-client sessions:

- Each such meeting shall be among the School Board members, the chief executive officer of the School District, and the Board's attorney only. Outside trial counsel is also permitted to attend.
- The Board's attorney must advise the Board at a public meeting that the attorney desires advice concerning pending litigation. This was done on September 4, 2012.
- The subject matter of each session must be confined to settlement negotiations or strategy sessions and to receive the Board's direction related to litigation expenditures in the currently pending litigation.
- The entire session must be recorded by a certified court reporter; the court reporter must record the times of commencing and terminating the session, all discussions and proceedings, the names of all persons present, and the names of all persons speaking; no portion of the session may be off the record; and the court reporter's notes must be fully transcribed and filed with the secretary to the Board.

- The Board must give reasonable public notice of the time and date of the session and the names of the persons who will attend; the session must commence at an open meeting at which the chairperson must announce the commencement and estimated length of the session and the names of the persons attending.
- At the conclusion of the session, the meeting must be reopened and the chairperson must announce termination of the session.
- Upon conclusion of the litigation, the transcript of the session will become part of the public record.

The Board has scheduled, and the District should promptly notice, a private attorney-client session for **September 11, 2012 at 9:00 a.m.** At that time, the chairperson should make the following announcements at the open meeting:

- The Board is commencing a private attorney-client session, the estimated length of which is 60 minutes.
- The subject matter of the session is to discuss settlement negotiations and strategy and for the Board to provide direction to counsel related to litigation expenditures. This court action relates to a claim of discrimination by a former employee which is currently pending in federal court in the Southern District of Florida. The case is on a trial docket for a trial period beginning September 20, 2012.
- The names of the persons attending the session are as follows:
 - Dr. David L. Anderson;
 - Mrs. Maura Barry-Sorenson;
 - Mr. Michael Busha
 - Mrs. Laurie Gaylord;
 - Mrs. Susan Hershey;
 - Mrs. Nancy Kline, Superintendent;
 - Robert L. Kilbride, School Board Attorney
 - Allen Sang, Esq., Outside trial counsel

At the conclusion of the session, the chairperson should then reopen the public meeting and publicly announce termination of the session.

Please advise if you have any questions or require additional information.



**School Board of Martin County
Agenda Item Request Form
Board Meeting: September 11, 2012**

Agenda Item # 3

1. **AGENDA ITEM:** Martin County High School Auditorium Renovations AB Fee Approval

X appropriate box(s): X New Renewal Addenda Presentation Grant \$ _____

2. **BACKGROUND INFO./STAFF RECOMMENDATION:** As directed by the Board at the Special School Board Meeting held on September 4th, staff met with Attorney Fred van Vonno and partner Michael McCluskey to address their concerns regarding the attached AIA Contract. The attached contract was modified to reflect the suggested changes. Staff recommends approval of contract with Song & Associates, Inc., in the amount of \$119,085 to provide design documents meeting current building code requirements.

3. **FINANCIAL IMPACT:**

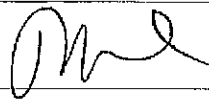
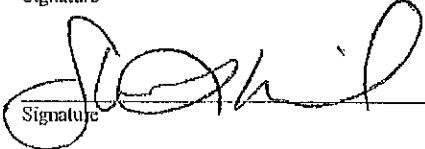
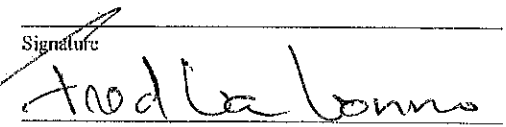
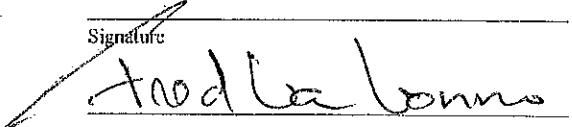
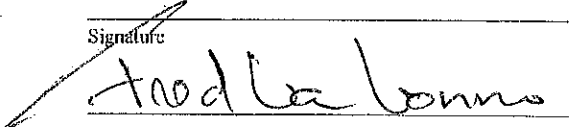
Is there a financial impact (Finance Review Required)? YES NO

Is funding provided in approved budget? YES NO

What additional funding is required? Indicate Amount \$ _____

Source: _____

4. **REQUIRED SIGNATURES:** By signing below, you are verifying that you have reviewed the item and it is ready for submittal to the Superintendent and School Board respectively.

| | | | |
|--|---------------------------------------|-----------|---|
| Requestor: | _____ | Signature | _____ |
| | Type or Print Name | |  |
| Director/Principal: | Julian G (Jay) Angel | Signature | _____ |
| | Type or Print Name | |  |
| Exec. Director or Asst. Superintendent: | Steve Weil | Signature | _____ |
| | Type or Print Name | |  |
| Finance Review: | Bryan Thabit | Signature | _____ |
| Required if Financial Impact | | |  |
| Legal Review: | X REQUIRED Fred van Vonno | Signature | _____ |
| Required for Contracts | <input type="checkbox"/> NOT REQUIRED | |  |

5. **SUPERINTENDENT RECOMMENDS APPROVAL:** YES NO

All lines must be filled in or note N/A and initial. Form Revised 7/3/12

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

Amended September 15, 2009

AGREEMENT made as of the 31st day of August in the year 2012
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Martin County School Board
500 East Ocean Boulevard
Stuart, FL 34994
Telephone: 772-219-1200
Fax Number: 772-221-4912

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

Song & Associates, Inc.
400 Australian Avenue South, Sixth Floor
West Palm Beach, FL 33401

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

Martin County High School Auditorium Code Compliance Remodel
Martin County High School
2801 SE Kanner Highway
Stuart, FL 34994

The Owner and Architect agree as follows.

AE shall provide architectural and engineering services to renovate Building 09 (Auditorium) at Martin County High School to meet current Building Code (2010) which comprises approximately 23,000 sq. ft. Work is further defined by AE's proposal letter dated August 29, 2012 (Exhibit 'A').

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.

init.

AIA Document B101[™] – 2007 (formerly B151[™] – 1997). Copyright © 1974, 1978, 1997, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 18:18:51 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(2018594906)

1



TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

October 17, 2012

- .2 Substantial Completion date:

January 15, 2013

§ 1.3 Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall negotiate to adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1997, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

2

(1916162352)

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

See Exhibit 'B'

.2 Automobile Liability

See Exhibit 'B'

.3 Workers' Compensation

See Exhibit 'B'

.4 Professional Liability

See Exhibit 'B'

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

(1916162352)

3

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.09577-11658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

(1916162352)

4

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

(1916162352)

5



- § 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by
- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
 - .2 organizing and participating in selection interviews with prospective contractors; and
 - .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction as amended by Owner July 13, 2009.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such 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, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall advise the Owner on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

§ 3.6.2.5 DELETED

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the

Init.

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)

6

Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize 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. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

Init.

AIA Document B101™ – 2007 [formerly B151™ – 1997]. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)

7

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

| Additional Services | Responsibility (Architect, Owner or Not Provided) | Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below) |
|--|--|--|
| § 4.1.1 Programming | Not Provided | |
| § 4.1.2 Multiple preliminary designs | Not Provided | |
| § 4.1.3 Measured drawings | A/E | |
| § 4.1.4 Existing facilities surveys | A/E | |
| § 4.1.5 Site Evaluation and Planning (B203™-2007) | Not Provided | |
| § 4.1.6 Building information modeling | Not Provided | |
| § 4.1.7 Civil engineering | Not Provided | |
| § 4.1.8 Landscape design | Not Provided | |
| § 4.1.9 Architectural Interior Design (B252™-2007) | Not Provided | |
| § 4.1.10 Value Analysis (B204™-2007) | Not Provided | |
| § 4.1.11 Detailed cost estimating | Not Provided | |
| § 4.1.12 On-site project representation | A/E | |
| § 4.1.13 Conformed construction documents | A/E | |
| § 4.1.14 As-Designed Record drawings | A/E | |
| § 4.1.15 As-Constructed Record drawings | Contractor | |
| § 4.1.16 Post occupancy evaluation | Not Provided | |
| § 4.1.17 Facility Support Services (B210™-2007) | Not Provided | |
| § 4.1.18 Tenant-related services | Not Provided | |

Init.

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA™ Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA™ Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)



| | | | |
|----------|---|--------------|--|
| § 4.1.19 | Coordination of Owner's consultants | Not Provided | |
| § 4.1.20 | Telecommunications/data design | A/E | |
| § 4.1.21 | Security Evaluation and Planning (B206™-2007) | Not Provided | |
| § 4.1.22 | Commissioning (B211™-2007) | Not Provided | |
| § 4.1.23 | Extensive environmentally responsible design | Not Provided | |
| § 4.1.24 | LEED® Certification (B214™-2007) | Not Provided | |
| § 4.1.25 | Fast-track design services | Not Provided | |
| § 4.1.26 | Historic Preservation (B205™-2007) | Not Provided | |
| § 4.1.27 | Furniture, Furnishings, and Equipment Design (B253™-2007) | Not Provided | |
| | | | |

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

N/A

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 DELETED
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 DELETED
- .6 DELETED
- .7 DELETED
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 DELETED
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 DELETED

§ 4.3.2

(Paragraphs deleted)

DELETED

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data Item, sample and similar submittal of the Contractor
- .2 Weekly () project meetings by the Architect over the duration of the Project during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

Init.

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA™ Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA™ Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/03/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)

9

§ 4.3.4 If the services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a reasonably timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 DELETED

§ 5.5 DELETED

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 DELETED

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. Upon request Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING:** This AIA™ Document is protected by U.S. Copyright Law and international treaties. Unauthorized reproduction or distribution of this AIA™ Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

{1916162352}

10

preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the

Init.

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)

11

Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the purposes of constructing, using, maintaining, altering, and adding to the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 DELETED

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 DELETED

§ 8.1.2 DELETED

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 DELETED

§ 8.2.2 DELETED

§ 8.2.3 DELETED

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

§ 8.3 ARBITRATION

§ 8.3.1 DELETED

§ 8.3.1.1 DELETED

§ 8.3.2 DELETED

§ 8.3.3 DELETED

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 DELETED

§ 8.3.4.2 DELETED

§ 8.3.4.3 DELETED

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of

performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 DELETED

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located n.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, as amended by Owner July 13, 2009.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific

init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

(1916162352)

13

information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

| § 10.8 DELETED

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

| \$119,085.00

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

The services of the Architect as provided in Section 4.1 are all included in the contract price. There shall be no additional compensation to Architect for the Additional Services provided for in Section 4.1.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

| § 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

(Rows deleted)

| | | |
|------------------------------|---------------------|-----|
| 100% Construction Documents | seventy percent | 70% |
| Bidding or Negotiation Phase | five percent | 5% |
| Construction Phase | twenty-five percent | 25% |

| | | |
|--------------------------|---------------------|------|
| Total Basic Compensation | One hundred percent | 100% |
|--------------------------|---------------------|------|

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

| N/A

| Employee or Category | Rate |
|----------------------|------|
|----------------------|------|

Init.

AIA Document B101™ - 2007 (formerly B151™ - 1997), Copyright © 1974, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)

14

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES – See Exhibit "A", which supersedes this provision to the extent that Exhibit "A" is inconsistent with this Section 11.8 regarding reimbursable expenses.

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 DELETED
- .5 DELETED
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 DELETED
- .11 DELETED

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

(Paragraphs deleted)

DELETED

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 DELETED

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (N/A) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

N/A %

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect, as amended September 15, 2009
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA™ Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA™ Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.

User Notes:

(1916162352)

Init.

/

15

Three signed copies of AIA B101 – 2007, as amended September 15, 2009

- 3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit 'A' – Architect's Proposal Letter
Exhibit 'B' – Architect's Certificate of Liability Insurance
Exhibit 'C' – DMS Fee Curve

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

OWNER

ARCHITECT

(Signature)

Susan J. Hershey, Board Chair
Martin County School Board

(Printed name and title)

(Signature)

Young Song, AIA, President
Song & Associates, Inc.

(Printed name and title)

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING:** This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 18:03:27 on 09/05/2012 under Order No.0957741658_1 which expires on 09/21/2013, and is not for resale.
User Notes:

(1916162352)

16



EXHIBIT A

August 29, 2012

Mr. Julian Angel
Director of Facilities
Martin County School District
500 East Ocean Blvd
Stuart, FL 34994

RE: Martin County High School Auditorium Code Compliance Remodel
Design Management
Professional Services Fee Proposal

Dear Jay:

Song + Associates, Inc. is pleased to submit our Architectural and Engineering Design Services proposal for code compliance upgrades for the District's Martin County High School Auditorium located in Stuart, FL.

I. PROJECT UNDERSTANDING AND FEE

As requested, please find our proposal for Architectural and Engineering Services the Martin County High Code Compliance Remodel. The fee for this proposal is generated from the Fee Guide Calculator for Architectural and Engineering Services from State of Florida, Department of Management Services. This fee calculator is the industry standard for professional services fees for the State of Florida. The project fits Complexity Group A, which is defined as "Greater Than Average Complexity". With a construction budget of \$1,079,136.00 for a project that fits the parameters of Complexity Group A, the recommended percentage of construction cost is 9.09%, which equals a total fee of \$98,085.00 for basic services. This fee calculator also lists services considered to be in addition to basic services. For this project we propose the following additional services be added to the fee:

| | |
|---|---------------------|
| 1. Basic Services | \$ 98,085.00 |
| 2. Additional Services per DMS Guidelines to include; Services for Existing Facility Analysis, ADA Code Review and Document Reproduction to Remove Fire Restoration Work Scope | \$ 22,000.00 |
| Total Fee | \$119,085.00 |

This fee is inclusive of all consultant fees, which includes Architectural, Code Requirements, ADA Requirements, Structural, Mechanical, Electrical and Plumbing.

II. SCOPE OF SERVICES

Song + Associates and our Consultants will provide the Construction Documents and Construction administration for the project and will be the point of contact for the Owner and the Contractor. We will provide Bidding / Negotiation Phase services, Construction Administration services and be the lead consultant to the District until project completion. These consultants engaged will perform typical Construction Administration services under the guidance and leadership of Song + Associates.

A. CONSTRUCTION DOCUMENTS FOR REVIEW AND PERMIT

1. Construction Documents for 100% complete to be submitted to MCSD 10 days following receipt of notice to proceed.

B. BIDDING AND NEGOTIATION ASSISTANCE

1. Responses to Contractor bidder questions
2. Issuance of revised documents for any required Addenda items
3. Conformance set of drawings and specifications for Owner and Agency comments.
4. Review and evaluation of Bidder submittals and qualifications.

Song + Associates, Inc.

Architecture • Planning • Interior Design
AA0003165 / IB0001095

400 Australian Avenue South, Sixth Floor
West Palm Beach, Florida 33401
telephone: 561.655.2423 fax: 561.655.1482

American Institute of Architects / NCARB

C. CONSTRUCTION ADMINISTRATION

1. Issue revised documents based upon coordination and field conditions
2. Conduct periodic site observation visits to evaluate construction relative to the intent of the documents
3. Lead weekly OCA meetings on site
4. Prepare and distribute meetings minutes

Song + Associates and those consultants engaged will provide full services required for the successful completion. We will manage the consultants in their existing capacities of Architect of Record. Song + Associates will be the responsible party for overall design team performance, will moderate construction meetings, will evaluate and certify payment applications, will be the management arm to provide signatures on project documents, will assist the Owner and Contractor in the assurance of maintaining project schedule, will lead the 'punch list' activities, will certify substantial completion and will approve the Final Certification and Application for Payment.

Song + Associates and those consultants engaged will issue necessary revisions to the Construction Documents including revised drawings, specifications and sketches for clarification as determined necessary during construction and when directed by the Owner for changes in project scope. The architectural and engineering consultants will make revisions based upon the direction of Song + Associates. These consultants will be the entities to sign and seal all building department review documents for revisions to the permit.

III. FEE SUMMARY WITH EXPENSES

Song + Associates, Inc. will provide the services described above for a fixed fee amount of (One Hundred Thousand Twenty One Thousand and Eighty Five Dollars (\$ 121,085.00). This fee includes reimbursable expenses as noted and described below:

| | |
|---|---------------------|
| 1. Basic Services | \$ 98,085.00 |
| 2. Additional Services per DMS Guidelines to include; Services for Existing Facility Analysis, ADA Code Review and Document Reproduction to Remove Fire Restoration Work Scope | \$ 22,000.00 |
| Total Fee | \$119,085.00 |

IV. REIMBURSABLE EXPENSES

All normal reimbursable expenses are included in the total fee other than the cost for printing and reproductions. The Architect shall be paid for these costs as an addition to the basic compensation described above.

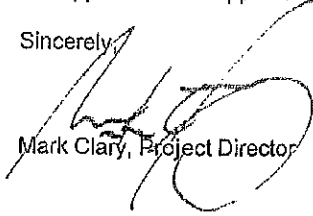
Acceptance of this proposal may be indicated by the signature of a duly authorized official of Martin County School District in the space provided below. Returning a signed copy of this proposal to our office will serve as an agreement between the two parties and as a notice to proceed. Song + Associates will await a Consultant Services Agreement / Purchase Order as prepared by the Martin County School District to be executed by both parties for our authorization to proceed.

Mr. Julian Angel
Martin County School District
Martin County High School Auditorium Remodel
Design Management Professional Services Fee Proposal
August 29, 2012
Page 3 of 3

EXHIBIT A

We appreciate this opportunity and look forward to our continued teaming.

Sincerely,



Mark Clary, Project Director

cc: Young Song, S+A
Jo Ann Brent, S+A

Accepted BY: _____

Title: _____

Date: _____



**School Board of Martin County
Agenda Item Request Form
Board Meeting: September 11, 2012**

Agenda Item # 4

1. **AGENDA ITEM:** Approve Personnel Recommendations
 X appropriate box(s): New Renewal Addenda Presentation Grant \$ _____
2. **BACKGROUND INFO./STAFF RECOMMENDATION:** Staff is requesting Board approval for the following **Administrative Personnel Promotions:**

1. **David Axton**, MMS Guidance Counselor, to Assistant Principal at HOMS on 9/12/12 to fill position previously held by M. Dailey; and
2. **Kathryn Morem**, Coor. of RTTT, to Assistant Principal at IMS on 9/12/12 to fill position previously held by L. Husnander

These positions are crucial to student success and to the teacher evaluation process mandated by Senate Bill 736. Additionally, these positions are included in the Board's approved Allocation Plan and are fully funded in the 2012-2013 Budget. Staff is requesting that these critical need positions be filled immediately with the above named, highly-qualified candidates.

Attached is additional information to aid Board Members in the decision-making process including a memorandum to Chair Susan Hershey and copied to all Board Members and others regarding the justification to fill these positions; and a copy of a letter from HOMS Principal Jenny Lambdin imploring the Chair to take action to fill these positions and the Superintendent's response.

3. **FINANCIAL IMPACT:**
 Is there a financial impact (Finance Review Required)? YES NO
 Is funding provided in approved budget? YES NO
 What additional funding is required? Indicate Amount \$ _____
 Source: _____

4. **Requestor:** Nancy Kline, Superintendent
 Type or Print Name

 Signature

5. **SUPERINTENDENT RECOMMENDS APPROVAL:** YES NO

All lines must be filled in or note N/A and initial.

Form Revised 7/3/12

Nancy Kline, Superintendent of Schools

THE SCHOOL BOARD OF MARTIN COUNTY, FLORIDA



500 East Ocean Blvd • Stuart, Florida 34994 • Telephone (772) 219-1200 Ext: 30200 • Facsimile: (772) 219-1231

MEMORANDUM

To: Sue Hershey, School Board Chair
From: Nancy Kline, Superintendent
Date: August 31, 2012
Regarding: Freeze on Administrative Positions

I believe the decision by the majority School Board to block the hiring of critical administrative positions within the District is harmful to District operations and places the health, safety, and welfare of children and staff at risk.

The administrative positions of Director of Transportation, Hidden Oaks Middle School Assistant Principal, and Indiantown Middle School Assistant Principal, are included in the School Board approved Allocation Plan and are fully funded in the 2012-2013 Budget. These positions are also included in the District's organizational chart.

Furthermore, the Assistant Principal positions, in addition to their critical responsibilities with students, are crucial to the teacher evaluation process. As you know, these evaluations are mandated by Senate Bill 736 and included in our contract with the Teachers' Union.

I am requesting that you reconsider your recommendation to freeze these positions, as well as any other vacancies that occur. I am further asking that you base your decision regarding these positions on what is in the best interest of our students and schools. The decision to not allow these positions to be filled is detrimental and disruptive to District operations.

Memorandum dated August 31, 2012, to Chair Sue Hershey regarding hiring freeze on administrative positions was copied to the following:

- Chancellor Pam Stewart, Florida Department of Education
- Bill Montford, Florida Association of District School Superintendents
- Wayne Blanton, Florida School Board Association
- Dr. David Anderson, Board Member
- Maura Barry-Sorenson, Board Member/Vice Chair
- Michael Busha, Board Member
- Laurie Gaylord, Board Member
- Dianne Falvo, Florida Education Association
- Pam Kessler, Martin County Education Association
- Executive Leadership Team
- Jeff Raimann, IMS Principal
- Jenny Lambdin, HOMS Principal
- Robert Kilbride, Interim School Board Attorney
- David Axton, MMS Guidance Counselor
- Kathryn Morem, Coord. or RTTT
- Media

Nancy Kline, Superintendent of Schools

THE SCHOOL BOARD OF MARTIN COUNTY, FLORIDA



500 East Ocean Blvd • Stuart, Florida 34994 • Telephone (772) 219-1200 Ext: 30200 • Facsimile: (772) 219-1231

August 31, 2012

Pam Stewart
Chancellor, Division of Public Schools
325 West Gaines Street
Room 1502
Tallahassee, Florida 32399-0400

Dear Chancellor Stewart:

A handwritten signature in cursive that reads "Pam".

Thank you for the conference call regarding the urgent need to fill vacant administrative positions and the care and control of District files. I made contact with Superintendent Yancey and will keep you informed as to the outcome.

Thank you for your support. *a guidance*.

Sincerely,

A handwritten signature in cursive that reads "Nancy Kline".

Nancy Kline
Superintendent



Hidden Oaks Middle School

2801 SW Marlin Highway Palm City, FL 34990 (772) 219-1655 Fax. (772) 219-1663 or (772) 223-3100

Ms. Jenny Lambdin
Principal

Mr. Michael Dailey
Assistant Principal

Assistant Principal

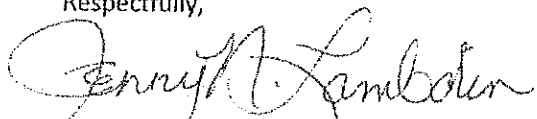
September 6, 2012

Dear Mrs. Hershey,

As the Principal of Hidden Oaks Middle School I am imploring you to take the required action as Chair of the Martin County School Board to follow through with Superintendent Kline's recommendation to fill the 227 Assistant Principal positions as soon as possible. The School Board's decision to freeze all administrative positions until November 22 is unprecedented in my 15 years as an administrator in the MCSD. The AP position is critical to the operations of a school the size of Hidden Oaks Middle. In making this decision you have indeed put operations, as well as the health, safety and welfare of our students and staff at risk. Your decision not to fill the AP position has taken away from the instructional responsibilities accorded myself and Mr. Dailey, which includes the implementation of the Teacher Evaluation process. I will not go into a long list of all our job responsibilities because I would hope that you are well aware of what they entail. Let me just say this, between now and December 14, we have approximately 260 classroom observations to perform. In order to achieve this it is imperative that we have our third administrator on staff. With each passing day we get further and further behind in the process.

I personally contacted Dr. David Anderson on Friday, August 17 and asked him to clarify the intention of the Board's action at the August 6 meeting. I asked if the freeze included school site AP's. Dr. Anderson told me it did not, and that the two outstanding AP positions at IMS and HOMS needed to be filled. I told him I was waiting a return call from Mrs. Kline regarding the recommendation of Mr. David Axton as our new AP of Student Services, and that I was hoping she would move forward with that recommendation to the Board. Mrs. Kline followed through with this recommendation but the Board did not live up to the information given to me during my discussion with Dr. Anderson. To be quite frank, I do not see the logic in your actions. My faculty and staff, as well as the Palm City School community deserve better than this.

Respectfully,


Jenny N. Lambdin, Principal

From: Kline, Nancy
Sent: Thursday, September 06, 2012 3:43 PM
To: Lambdin, Jenny
Cc: Busha, Pam; Taylor, Rosemarie
Subject: RE: HOMS AP Position
Attachments: Scan0001.pdf

Jenny,

I firmly believe that the majority Board's refusal to allow the AP positions to be filled puts the health, safety and welfare of the schools' students and staff at risk. You have already received my Memorandum from Friday (following the Board Meeting) which makes my position clear. I continue to hear from many concerned parents who concur with my recommendation to fill the two positions. I intend to bring these positions back before the Board at the next meeting. As you know, this majority Board decision has nothing to do with the budget, and thus far, I have not received any response from the three majority Board members (Hershey, Gaylord and Anderson) that justifies putting our schools at risk and in such a difficult position at the start of the school year.

Nancy

Nancy Kline
Superintendent
Martin County School District
(772) 219-1200, Extension 30200
(772) 260-6979



Because Children are Counting on Us
www.martinschools.org

Email records are public records under Florida law and in general are not exempt from public records requests. If your email response contains information that may be considered sensitive or confidential pursuant to Federal or State law please do not send that information. It is your responsibility to control and to make alternative arrangements.

From: Lambdin, Jenny
Sent: Thursday, September 06, 2012 12:43 PM
To: Hershey, Sue
Cc: Gaylord, Laurie; Barry-Sorenson, Maura; Busha, Michael; Anderson, David; Kline, Nancy
Subject: HOMS AP Position

Jenny N. Lambdin, Principal
Hidden Oaks Middle School
2801 SW Martin Highway
Palm City, Florida 34990
772-219-1655, ext. 101