BECKER MORGAN GROUP

ARCHITECTURE
ENGINEERING

Date:

William F. Cooke, Jr. Elementary School
New Castle County, Delaware
2012080.00

Release for use of Digital Media

In connection with the Agreement between the Owner and Architect dated <insert DATE>, Architect will provide the <insert Owner's name> with certain Instruments of Services in electronic format.

Pursuant to your request, the digital media being provided is forwarded in accordance with the following terms.

Definitions:

a. Digital Information: the information stored on Digital Media or sent via electronic exchange (email and FTP) known as the Work of the contracted design professional, Becker Morgan Group, Inc. and their consultants, herein after referred to as the Firm.
b. Digital Media: the electronic, electromagnetic and/or optical storage media, (i.e. disk drives, tapes, compact or DVD discs, etc.) on which the Work is stored.
c. The Work: the instrument of professional services of the Firm including but not limited to the design drawings, sketches, renderings, photographs, models, specifications.

Terms:

1. In accepting and utilizing Digital Information on any form of Digital Media or email generated and provided by the Firm, the Undersigned covenants and agrees that all such Digital Information are instruments of service of the Firm prepared solely for use in connection with the single project for which they were prepared, who shall be deemed the author of the Digital Information, and shall retain all common law, statutory law and other rights, including copyrights.
2. The Digital Documents are provided as a convenience to the Recipient for informational purposes only in connection with the Recipient's performance of its responsibilities and obligations relating to the Project. The Digital Documents are not Contract Documents and do not replace or supplement the paper copies of the Drawings and Specifications that are, and remain, the Contract Documents for the Project.
3. The Digital Information is provided only as a design record prior to construction and for reference to the Undersigned. The information in no way shall be used for "as-built" or record purposes.

4. The Undersigned agrees not to use this Digital Information, in whole or in part for any purpose or project other than the specific project for which the Undersigned and the Firm have a prior Professional Services Agreement. It is further understood and agreed that only printed copies of the Instruments of Services shall be signed and sealed by Architect or its subconsultants in accordance with the laws of the state in which the project is built.
5. The Work cannot be distributed, altered, reused, sold, leased, printed, plotted, or duplicated without the expressed written consent of the Firm.
6. For Shop Drawings - Where the Recipient has received specific permission to use the Digital Documents in connection with Recipient's obligation to prepare certain documents for the Project, Recipient shall, in addition to the other obligations set forth herein, be obligated to remove Architect's or Architect's Consultant's title block from the copy of the Digital Documents used by Recipient. It is understood and agreed that the Digital Documents are not to be used by any contractor or any of its subcontractors of any tier or any material supplier or vendor as a shop drawing or any other type of submittal or as the basis for preparing such shop drawing or submittal. The sole exception to this prohibition shall be that the Recipient may use the Digital Documents as backgrounds upon which to prepare its shop drawing or other submittal when it is specifically permitted in technical section of project specification. When these digital documents are used as backgrounds in the preparation of shop drawings or other submittals, the Recipient agrees to confirm the accuracy of the digital documents before using then, Recipient agrees to accept all responsibility for any errors or inaccuracies and to release the Architect and its subconsultants from any liability or claims for recovery of damages or expenses arising as the result of such errors or inaccuracies.
7. Under no circumstances shall transfer of the Digital Information for use by the Undersigned be deemed a sale by the Firm. The parties agree that the Digital Documents are not, nor shall they be construed to be, a product. The Firm makes no warranties, either express or implied, of the Digital Media or the Digital Information as to merchantability or fitness for any particular purpose the Undersigned may need.
8. The Digital Information submitted by the Firm to the Undersigned is submitted for an acceptance period of sixty days. Any defects the Undersigned discovers during this period shall be reported to the Firm and may be corrected as part of the Firm's Basic Scope of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.
9. The Digital Information is not guaranteed as to accuracy and completeness of all dimensions and details. Information contained in the signed and sealed printed documents should be deemed to be correct and superior to digital information.
10. The Digital Information is not guaranteed as to compatibility, in so far as incompatibilities may be present now or in the future in the Undersigned's computers, storage devices, software, and output systems.
11. The Digital Media on which the Digital Information is provided cannot be guaranteed as to its durability, completeness or usability, in so far as instabilities may be present in the Digital Media, and in the transferring, archiving, recording or translating systems now and in the future. The Firm is not liable in any way for the perpetuation of this Digital Information on released digital media or on digital media retained by the Firm for its archives. Recipient agrees to accept all responsibility for any errors or inaccuracies and to release Architect and its subconsultants from any liability or claims for recovery of damages or expenses arising as the result of such errors or inaccuracies.
12. Provision of the Information to the Undersigned in no way limits the Firm to the further use of the Digital Information for the Firm's benefit.
13. Recipient agrees to waive any and all claims and liability against Architect and its subconsultants resulting in any way from any failure by Recipient to comply with the requirements of this Agreement for the Delivery of Documents in Digital Format. The

Undersigned agrees, to the fullest extent permitted by law, to indemnify and hold the Firm harmless from any damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than the Firm or from any reuse of the Digital Information without the prior written consent of the Firm. Recipient further agrees to indemnify and save harmless the Owner, Architect and its subconsultants and each of their partners, officers, shareholders, directors and employees from any and all claims, judgments, suits, liabilities, damages, costs or expenses (including reasonable defense and attorneys fees) arising as the result of either: 1) Recipient's failure to comply with any of the requirements of this Agreement for the Delivery of Documents in Digital Format; or 2) a defect, error or omission in the Digital Documents or the information contained therein, which defect, error or omission was not contained in the Contract Documents as defined in Paragraph 2 or where the use of such Contract Documents would have prevented the claim, judgment, suit, liability, damage, cost or expense.

14. Check one:
    - ☐ The Undersigned agrees to $200 charge per digital file created payable to this office prior to release of any Digital Information. Note: it may be assumed that one printed drawing sheet is equivalent to one digital file.
    - ☐ Charges are not applicable as provision of Digital Information is part of the Basic Scope Services.

Please sign below and return one copy of this form to our office.

Media/Information Received: _____

_____

sign here> _____
Accepted - signature Date

_____
Name/Title – printed

_____
Company

_____
BMG Principal - signature Date

_____
BMG Principal – printed

_____
Prepared by – printed