



DOVER SCHOOL DISTRICT

SAU 11

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Empowering all Learners

November __, 2020

VIA EMAIL

Laura Wernick, Senior Principal
HMFH Architects
130 Bishop Allen Drive
Cambridge, MA 02139

Re: **Section 179D Federal Income Tax Deduction**

Dear Laura:

I write in response to your letters dated June 4, 2020 and September 2, 2020, observing the significant energy efficiency achievements of the Dover High School and Career Technical Center (“DHS/CTC”) and requesting that the DHS/CTC Joint Building Committee (“JBC”) consider transferring the income tax deduction allowed by 26 U.S.C. § 179D to HMFH Architects, Inc. (“HMFH”) as allowed by current law.

Before addressing your letters, I’d like to again thank HMFH for its continued involvement with the DHS/CTC project. HMFH’s valued input and continuing effort are appreciated and important to help close out this successful project.

With respect to the Section 179D deduction, and as you probably know, a public entity’s ability to transfer the Section 179D deduction is meant to not only incentivize energy efficient building projects, but also to enable public entities who are exempt from federal income tax to realize value from the Section 179D deduction.

It is my understanding that often the transfer of Section 179D deductions are contemplated and planned for at the front-end of a project as a component of contractual compensation for the architect’s services.

In the case of the DHS/CTC, there is no provision in HMFH’s contract contemplating the transfer of the Section 179D deduction. Nevertheless, I am happy to report that I have discussed your request with the JBC, who has voted to approve transferring the Section 179D deduction to HMFH, provided HMFH agrees to the following two conditions of transfer:

- Assumption of Risk/Indemnification: HMFH shall assume and bear the sole responsibility and risk for any submissions, representations, tax returns, or other kind filings made to any federal agency or tribunal in connection with the Section 179D deduction. In addition, HMFH agrees to indemnify and hold harmless the DHS/CTC Joint Building Committee, Dover School District,

Dover School Administrative Unit #11, and the City of Dover, and each of them, from and against any costs, penalties, tax liabilities, tax amounts, or any item of expense whatsoever (including but not limited to costs of internal staff time) arising out of or in relation to the Section 179D deduction and/or any associated audit, administrative review, administrative appeal, judicial review, or any other proceeding of any kind.

- Completion of DHS/CTC Project at No Additional Fee or Cost: HMFH will continue to provide architectural services for the DHS/CTC project as set forth in the AIA Document B101-2007 Standard Form of Agreement Between Owner and Architect dated December 2, 2014 between HMFH and the Dover School District, including what HMFH has in the past asserted as “Additional Services”, through the completion of the DHS/CTC project and issuance of final certificates of occupancy. Barring a currently unforeseen and unforeseeable occurrence, HMFH agrees to and accepts the Section 179D deduction in full satisfaction of, and irrevocably foregoes, waives, and covenants not to assert, any claim, invoice, charge, cost, expense, fee, additional services, or additional cost for, any and all of HMFH’s architectural services provided through the date of HMFH’s last paid invoice and through the final completion of and issuance of final certificates of occupancy for the DHS/CTC Project.

In addition, and while not a condition itself, the DHS/CTC JBC would very much welcome and appreciate HMFH making an appropriate donation to the DHS/CTC Electrical Engineering Program, provided the acceptance of such a donation is authorized. The JBC understands that HMFH does not yet know the exact dollar value of the Section 179D deduction.

If HMFH agrees to these conditions, please kindly countersign this letter and return a copy to my and the JBC’s attention.

Thank you and, as always, the JBC appreciates your continued support.

Very truly yours,

Robert Carrier, Chairman
JBC – Dover High School and Regional CTC

Accepted by:

HMFH Architects, Inc.

By:

Laura Wernick, FAIA
Senior Principal
Duly Authorized

Date