

Board of Education Regular Meeting  
Saturday, March 14, 2026 9:00 AM  
East Butler School  
212 South Madison Street  
Brainard, NE 68626-0036

1. Call Meeting To Order
2. Roll Call
3. Flag Salute/Open Meetings Act Statement
4. Mission & Vision Statement
5. School Board Goals
6. Patron's Comments
7. Discussion/Informational Items
  - 7.1. Facility Enhancement Update
  - 7.2. Legislation Update
  - 7.3. Extra Duty Assignments 2026-2027
8. Consent Agenda
  - 8.1. Approval of Minutes
  - 8.2. Treasurer's Report
  - 8.3. Approval of Resignations and Hires
9. Regular Agenda
  - 9.1. Discuss, consider, and take all necessary action on the policy revisions.
  - 9.2. Discuss, consider, and take all necessary action on the LanMan Partnership agreement for the 2026-2027 School year.
  - 9.3. Discuss, consider, and take all necessary action on the mowing bids.

9.4. Discuss, consider, and take all necessary action on the classified staff compensation for the 2026-2027 school year.

9.5. Discuss, consider, and take all necessary action on the technology purchases for the 2026-2027 school year.

9.6. Discuss, consider, and take all necessary action to approve the contract with Boyd Jones and authorize the superintendent to sign on behalf of the district for the Facility Enhancement Project.

10. Administrative Comments

11. Adjournment

**East Butler Public School District**  
**Board of Education**  
***Goals for 2024-2025***

***Focus on Academic Excellence and Well-Being for All***

- Continue to pursue more dual credit offerings and tuition reimbursement opportunities for high school students, as well as monitor the percentage of graduating seniors that leave with 12+dual credit hours.
- Enhance professional learning opportunities for staff.
- Continue to monitor the effectiveness of our before/after school programming.
- Continued focus on staff retention.
- Expand and further communicate resources and programming for mental and social-emotional health and support for students and staff.

***Facility Planning to Address Short-Term and Long-Term Needs***

- Work to maximize proactive efficiency through strategic use of 3-5 year building project plans that will be reviewed and adjusted as needed.
- Keep track of phased projects and updates and make sure the progress of each is communicated well throughout our school district communities.
- Identify and implement necessary school safety improvements.

***Prioritize Responsible Budgeting and Tax Request Protocols***

- Work towards consistent levy management and property tax revenue requests.
- Look at ways to maximize efficiency as we focus on needs vs. wants with a strong checks and balances system in place.
- Align 3-5 year General Fund budget plan with 3-5 year Building Fund project plan

***Enhance Communication and Engagement***

- Increase the number of special events, promotions, and recognitions.
- Find ways to use existing technology to its maximum capacity.
- Emphasize ways to communicate to all community members.
- Continue to utilize postal mail, paper bulletins, and board briefs.
- Look to maintain or increase student enrollment through continued communication and engagement efforts with current and potential student families.
- Consider implementing some new events like Community Coffees, Lunch & Learns, and/or a Board Town Hall.

## Legislative Information

March 14, 2026

### **Bills Currently Being Monitored**

**LB 1219 (Brandt)** was advanced by the Revenue Committee.

LB 1219 provides that, beginning January 1, 2027, and notwithstanding the Property Tax Growth Limitation Act and the School District Property Tax Limitation Act, the total amount of property taxes that may be levied by a political subdivision in any year may not exceed the total amount levied in the prior year by more than the allowable growth percentage.

The “allowable growth percentage” is defined as a percentage equal to the sum of:

- 2%, plus
- The political subdivision’s real growth percentage.

The “real growth percentage” is defined as the percentage obtained by dividing:

- The political subdivision’s real growth value by
- The political subdivision’s total property valuation from the prior year.

The “real growth value” is defined as the increase in a political subdivision’s total property valuation from the prior year to the current year due to:

- Improvements to real property as a result of new construction and additions to existing buildings,
- Any other improvements to real property which increase the value of such property,
- Annexation of real property by the political subdivision,
- A change in the use of real property, and
- Any increase in personal property valuation over the prior year.

East Butler’s “real growth percentage” for this current year was 1.21%, this is added onto the “allowable growth” percentage of 2%. Which means you were allowed to increase your tax asking by 3.21% before having to attend the joint hearing. In the last several years, the real growth percentage was less than 1%.

**LB 653 (Murman)** Changes the Option Enrollment laws to state that an option school district must automatically accept applications for siblings of option students enrolled in the option school district without regard to capacity limitations.

**K-2 Suspension:** Changes the prohibition on suspension of kindergarten through 2nd grade students to include a new exception. In addition to the existing exception related

## Legislative Information

March 14, 2026

to bringing a deadly weapon to school, the new exception pertains to engaging in violent behavior capable of causing physical harm to another student or school employee.

This bill was passed and signed into law by Governor Pillen - it becomes operative 90 days after the legislature adjourns.

**LB 1050 (Murman, at the request of the Governor)** relates to 3rd grade reading proficiency. The bill, as introduced, is similar to the “Mississippi Miracle” law. The most current version of the measure is contained in AM2198. The committee has talked about the bill but has not taken action. Assuming LB 1050 becomes a package bill, there is no certainty as to what measures may be included.

**LB 940 (Murman)** prohibits public schools from using certain color additives in school meals. Beginning August 1, 2027, no public elementary or secondary school will offer or make available to any student any food served as part of a school meal that contains any of the following color additives:

- Blue No. 1
- Blue No. 2
- Green No. 3
- Red No. 40
- Yellow No. 5
- Yellow No. 6

**LB 384 (Storer)** changes requirements if any political subdivision seeks to increase its property tax request by more than the allowable growth percentage. The bill requires that at least one voting member of each participating political subdivision attend the joint public hearing. The bill also requires that the county assessor attend the hearing. This bill was signed into law.

**LB 730 (Kauth)** - Require schools and state agencies to designate restrooms and locker rooms based on sex and require state agencies to define an individual’s sex as either male or female for purposes of rules and regulations, the enforcement of administrative actions, and adjudication of disputes.

## Extra Duty Assignments 2026-2027

Head Football	Gabe Gauthier
Assistant Football	Doug Glasshoff, Matt Smaus, Austin Tejral
Cross Country	Megan Kozisek
Assistant XC	Aaron Christiansen
Head Volleyball	Danielle Hlavac
Volleyball Assistants	Nathan Wall
Softball	Greg Jahde
Girls Basketball	James Kriz
Assistant Girls Basketball	Nicole Malina
Boys Basketball	Matt Novak
Assistant Boys Basketball	Andrew Pierce
Wrestling	Jeremy Hlavac
Assistant Wrestling	Brent Orta, Doug Glasshoff
Girls Wrestling	Lana Robinson
Track	Matt Novak
Assistant Track	Doug Glasshoff, Jeremy Hlavac, James Kriz

---

### JR. HIGH SPORTS

Cross Country	Jordan Fuehrer
Football	Shawn Biltoft
Assistant football	Brent Orta
Volleyball	Nicole Malina
Assistant volleyball	N/A
Girls Basketball	Jordan Fuehrer
Assistant Girls	N/A
Boys Basketball	Greg Jahde
Wrestling	Jeremy Hlavac
Girls Wrestling	
Boys Track	Jordan Fuehere
Girls Track	Greg Jahde

---

### OTHER ACTIVITIES

Activities Director	Greg Jahde
Assistant Activities Director	Jeremy Hlavac
Before & After School Coord.	Lisa Bohaty
FCCLA Sponsor	Sandy Bongers
Cheerleading Sponsor	Ashley Niemann
Foundation Admin Assist.	Megan Pelan
Instrumental Music	Ryan Salak
Vocal Music	Ryan Salak, Vickie Hines
Summer Band	Ryan Salak
Assessment Coordinator	Doug Glasshoff
Spirit Leader Sponsor	
FBLA Sponsor	Ryan Salak

Concessions Manager	Sandy Bongers
Play Production Sponsor	Aaron Christensen & Ryan Salak
School Improvement Coordinator	Valerie Vandenberg
National Honor Society Sponsor	Andrew Wood
Speech Sponsor	Michelle Janda
SAT Coordinator	Lana Robinson
Streaming Sponsor	Greg Jahde
Quiz Bowl	Andrew Wood
Skills USA Sponsors	Lisa Bohaty & Haley Teten
E-Sports Sponsor	Chris Nieman
Elementary Building Supervisor	Mary Miller
Yearbook Sponsor	Karmen Widick
FFA	Jenny Kocian
Assistant FFA	Brooklyn Maxson
HAL	
Student Council Sponsor	Karmen Widick
Gold Assessment Mentor	Sophie Hermelbracht
School Nurse	Angie Sisel
Letterclub Sponsor	Kathy Witzel
Tiger Den Sponsor	Lisa Bohaty, Sandy Bongers, Jenny Kocian, Chris Palensky
Social Media Coord.	Ryan Salak
7 <sup>th</sup> Grade Sponsor	Matt Novak
8 <sup>th</sup> Grade Sponsor	Lana Robinson
9 <sup>th</sup> Grade Sponsor	James Kriz
10 <sup>th</sup> Grade Sponsor	Sophie Hermelbracht
11 <sup>th</sup> Grade Sponsor	Val Vandenberg, Karmen Widick
12 <sup>th</sup> Grade Sponsor	Andrew Wood, Mark Cidlik

Board of Education Regular Meeting  
Monday, February 9, 2026 6:30 P.M.  
East Butler School - Brainard, NE

1. Call Meeting To Order at 6:30 P.M.

2. Roll Call - Present: Megan Kozisek, Ryan Pekarek, Laurie Smaus, Dylan Spatz, and Sarah Strizek. Absent: Brandon Jisa. Also present: Mr. Michael Eldridge, Superintendent, Mr. Mark Cidlik, Secondary Principal, and Mr. Shawn Biltoft, Elementary Principal.

3. Flag Salute/Open Meetings Act Statement

4. Celebration of #EvenBetter - Members of the high school band (Jason Bongers, Michael Kunasek, Emy Lyons, and Margret Pekarek) shared highlights from their trip to Memphis, Tennessee. They were able to participate in the Liberty Bowl parade and halftime show on January 2nd.

5. Mission & Vision Statement - East Butler Public Schools will develop respectful, responsible, and productive citizens. Vision Statements - Create a safe environment of respect and mental well-being for students and staff; Continue the pursuit of commitment, collaboration, and communication among students, staff, and community members; and Construct a curriculum that is rigorous, adaptable, utilizes technology, and aligns with recognized standards.

6. School Board Goals - These include: Focus on Academic Excellence and Well-Being for All; Facility Planning to Address Short-Term and Long-Term Needs; Prioritize Responsible Budgeting and Tax Request Protocols; and Enhance Communication and Engagement

7. Patron's Comments - Public Comment was received from the following patrons: Bruce Bostelman & Jan Bostelman

8. Discussion/Informational Items

8.1. Summer Work Update - Mr. Eldridge updated the board on the Summer projects. Projects moving forward for this summer are: K & 1st grade classrooms - Brainard renovation; Dwight PK-2 carpet; resealing of main gym floor & mpr; stripe parking spaces; concrete long and triple jump pit and discus ring. A majority of these are part of the district's five-year facility plan.

8.2. Legislative Update - Mr. Eldridge updated the board on current pieces of legislation that require the district's attention. Some legislation may have a positive or negative impact on the school district. Additionally, the legislative advocacy committee attended the recent Legislative Issues Conference in Lincoln.

8.3. Potential Building Project Update - Mr. Eldridge gave an update regarding the potential building project. The following information was shared: Water Main Rerouting (Currently there is a water main that runs along S. Garfield Street – would be rerouted to the west of the quonset); The Village of Brainard has passed an ordinance to vacate S Garfield Street. This was a process that started in November 2025; Other items to consider as we narrow down the Guaranteed Maximum Price - material for the parking lot, height of the gym, finish material. The early bid packages may come as early as the March board meeting. However, it could also be the April meeting.

## 9. Consent Agenda

### 9.1. Approval of Minutes

### 9.2. Treasurer's Report

### 9.3. Approval of Resignations and Hires

Motion to approve the consent agenda as presented passed with a motion by Ryan Pekarek and a second by Sarah Strizek.

Brandon Jisa: Absent, Megan Kozisek: Yea, Ryan Pekarek: Yea, Laurie Smaus: Yea, Dylan Spatz: Yea, Sarah Strizek: Yea

## 10. Regular Agenda

### 10.1. Discuss, consider, and take all necessary action on the proposed summer work Bids.

Accept the bids as presented while accepting the Klement Electric bid and the Midwest flooring bid for VCT tile in the Dwight Preschool classroom passed with a motion by Ryan Pekarek and a second by Laurie Smaus.

Brandon Jisa: Absent, Megan Kozisek: Yea, Ryan Pekarek: Yea, Laurie Smaus: Yea, Dylan Spatz: Yea, Sarah Strizek: Yea

### 10.2. Discuss, consider, and take all necessary action on the policy revisions.

There were no changes - no action taken.

10.3. Discuss, consider, and take all necessary action on the classified staff's compensation for the 2026-2027 school year.

The school board discussed compensation for the classified staff for the 2026-2027 school. Classified staff would include administrative professionals, bookkeeper, bus drivers, cooks, maintenance, custodians, and paraprofessionals. As part of this conversation, the topic of school health insurance was also discussed. Currently the district will pay for single health insurance for all of the classified staff. The health insurance policy that they receive is a different package than what the teaching staff receives. The paraprofessionals in attendance requested that their health insurance plan mimic the plan that the teaching staff currently holds. The school board advised Mr. Eldridge to gather information on the cost of a health insurance change for the classified staff and bring it to the March meeting. No action was taken on this agenda item.

10.4. Discuss, consider, and take all necessary action on the Principal's compensation for the 2026-2027 school year.

Enter closed session at 7:39 P.M. for the purpose of discussing the principal's compensation to protect the individual's reputation passed with a motion by Ryan Pekarek and a second by Dylan Spatz.

Brandon Jisa: Absent, Megan Kozisek: Yea, Ryan Pekarek: Yea, Laurie Smaus: Yea, Dylan Spatz: Yea, Sarah Strizek: Yea

The board exited the closed session at 8:22 P.M.

Approved 2% increase on salary for the 2026-2027 school year for the principals passed with a motion by Sarah Strizek and a second by Ryan Pekarek.

Brandon Jisa: Absent, Megan Kozisek: Yea, Ryan Pekarek: Yea, Laurie Smaus: Yea, Dylan Spatz: Yea, Sarah Strizek: Yea

11. Administrative Comments - Mr. Cidlik reported on the following items: Professional Learning Day; Academic Pep Rally; Senior Class Update; Center for Survivors Revolution Presentation; and 7-12 Information. Mr. Biltoft reported on the following items: Parent Teacher Conferences/Professional Learning; Kindergarten/Preschool Information; Parents Promoting Tiger Activities; and ESU #7 Programs.

## 12. Adjournment

Motion to adjourn at 8:49 P.M. passed with a motion by Dylan Spatz and a second by Ryan Pekarek.

Brandon Jisa: Absent, Megan Kozisek: Yea, Ryan Pekarek: Yea, Laurie Smaus: Yea, Dylan Spatz: Yea, Sarah Strizek: Yea

Kim Fuehrer  
Recording Secretary

Fund: 01 GENERAL FUND

<u>Account Number</u>	<u>Description</u>	<u>Revised Budget</u>	<u>During Month</u>	<u>To Date</u>	<u>% of Budget</u>	<u>Budget Balance</u>
01 1100	PROPERTY TAXES	0.00	0.00	2,963,868.41	0.00	(2,963,868.41)
01 1115	CARLINE	0.00	0.00	244.83	0.00	(244.83)
01 1120	PUBLIC POWER DISTRICT-SALES TAX	0.00	0.00	1,876.06	0.00	(1,876.06)
01 1125	MOTOR VEHICLE TAXES	0.00	0.00	249,652.78	0.00	(249,652.78)
01 1370	PRE-SCHOOL TUITION	0.00	0.00	18,400.00	0.00	(18,400.00)
01 1510	INTEREST	0.00	0.00	12,271.42	0.00	(12,271.42)
01 1800	COMMUNITY SERVICE ACTIVITIES	0.00	0.00	9,450.00	0.00	(9,450.00)
01 1911	LOCAL LICENSE FEES	0.00	0.00	1,260.00	0.00	(1,260.00)
01 1920	CONTRIBUTIONS & DONATIONS	0.00	0.00	8,873.16	0.00	(8,873.16)
01 1960	MISC REVENUES FROM OTHER LOCAL	0.00	0.00	631.69	0.00	(631.69)
01 1990	MISC LOCAL REV	0.00	0.00	5,028.75	0.00	(5,028.75)
	Subtotal: LOCAL RECIEPTS	0.00	0.00	3,271,557.10	0.00	(3,271,557.10)
01 2110	COUNTY FINES/LICENSES	0.00	0.00	12,086.16	0.00	(12,086.16)
01 2210	ESU RECEIPTS	0.00	0.00	974.45	0.00	(974.45)
	Subtotal: 2000	0.00	0.00	13,060.61	0.00	(13,060.61)
01 3110	STATE AID	0.00	0.00	681,275.58	0.00	(681,275.58)
01 3551	CAREER EDUCATION	0.00	0.00	45.90	0.00	(45.90)
01 3990	OTHER STATE RECEIPTS	0.00	0.00	31,037.00	0.00	(31,037.00)
	Subtotal: 3000	0.00	0.00	712,358.48	0.00	(712,358.48)
01 5690	OTHER NON-REVENUE RECEIPTS	0.00	0.00	19,856.26	0.00	(19,856.26)
	Subtotal: 5000	0.00	0.00	19,856.26	0.00	(19,856.26)
	Fund Total:	0.00	0.00	4,016,832.45	0.00	(4,016,832.45)

Fund: 05 ACTIVITY FUND

<u>Chart of Account Number</u>	<u>Chart of Account Description</u>		<u>Expenses</u>	<u>Revenues</u>	<u>Balance Change</u>	<u>Balance</u>
05 704	FUND BALANCE	*Previous Balance				100,146.40
		*Ending Balance:	0.00	0.00	0.00	100,146.40
05 704 2001	ACADEMIC DECATHALON	*Previous Balance				1,080.80
		*Ending Balance:	0.00	0.00	0.00	1,080.80
05 704 2002	AG MEMORIALS	*Previous Balance				360.63
		*Ending Balance:	0.00	0.00	0.00	360.63
05 704 2003	ANNUAL	*Previous Balance				13,497.38
		*Ending Balance:	0.00	0.00	0.00	13,497.38
05 704 2004	ATHLETIC	*Previous Balance				(74,737.54)
		*Ending Balance:	0.00	0.00	0.00	(74,737.54)
05 704 2006	CHEERLEADERS	*Previous Balance				3,482.11
		*Ending Balance:	0.00	0.00	0.00	3,482.11
05 704 2007	CLOSE UP	*Previous Balance				12,743.76
		*Ending Balance:	0.00	0.00	0.00	12,743.76
05 704 2008	COLLEGE ACCESS GRANT	*Previous Balance				103.75
		*Ending Balance:	0.00	0.00	0.00	103.75
05 704 2009	CONCESSIONS	*Previous Balance				4,298.31
		*Ending Balance:	0.00	0.00	0.00	4,298.31
05 704 2010	DANCE TEAM	*Previous Balance				204.51
		*Ending Balance:	0.00	0.00	0.00	204.51
05 704 2011	DRAMA	*Previous Balance				4,520.66
		*Ending Balance:	0.00	0.00	0.00	4,520.66
05 704 2012	DRUG FREE PROGRAM	*Previous Balance				395.49
		*Ending Balance:	0.00	0.00	0.00	395.49
05 704 2014	FBLA	*Previous Balance				1,488.41
		*Ending Balance:	0.00	0.00	0.00	1,488.41
05 704 2015	FCCLA	*Previous Balance				4,221.12
		*Ending Balance:	0.00	0.00	0.00	4,221.12
05 704 2016	FFA	*Previous Balance				23,083.54
		*Ending Balance:	0.00	0.00	0.00	23,083.54
05 704 2017	FFA GREENHOUSE	*Previous Balance				17,153.46
		*Ending Balance:	0.00	0.00	0.00	17,153.46
05 704 2025	CLASS OF 2025	*Previous Balance				11.08

Fund: 05 ACTIVITY FUND

<u>Chart of Account Number</u>	<u>Chart of Account Description</u>		<u>Expenses</u>	<u>Revenues</u>	<u>Balance Change</u>	<u>Balance</u>
		*Ending Balance:	0.00	0.00	0.00	11.08
05 704 2026	CLASS OF 2026	*Previous Balance				2,001.95
		*Ending Balance:	0.00	0.00	0.00	2,001.95
05 704 2027	CLASS OF 2027	*Previous Balance				3,482.55
		*Ending Balance:	0.00	0.00	0.00	3,482.55
05 704 2028	CLASS OF 2028	*Previous Balance				4,054.73
		*Ending Balance:	0.00	0.00	0.00	4,054.73
05 704 2029	CLASS OF 2029	*Previous Balance				304.00
		*Ending Balance:	0.00	0.00	0.00	304.00
05 704 3001	LAPTOP INITIATIVE	*Previous Balance				18,309.70
		*Ending Balance:	0.00	0.00	0.00	18,309.70
05 704 3002	LETTERCLUB	*Previous Balance				1,631.94
		*Ending Balance:	0.00	0.00	0.00	1,631.94
05 704 3004	MUSIC	*Previous Balance				454.73
		*Ending Balance:	0.00	0.00	0.00	454.73
05 704 3005	NATIONAL HONOR SOCIETY	*Previous Balance				572.70
		*Ending Balance:	0.00	0.00	0.00	572.70
05 704 3006	SPEECH	*Previous Balance				17.76
		*Ending Balance:	0.00	0.00	0.00	17.76
05 704 3007	STUDENT COUNCIL	*Previous Balance				2,654.81
		*Ending Balance:	0.00	0.00	0.00	2,654.81
05 704 3009	WR SPIRIT LEADERS	*Previous Balance				514.69
		*Ending Balance:	0.00	0.00	0.00	514.69
05 704 3010	SKILLS USA	*Previous Balance				5,757.82
		*Ending Balance:	0.00	0.00	0.00	5,757.82
05 704 3011	CAREER TECHNICAL EDUCATION	*Previous Balance				10,181.89
		*Ending Balance:	0.00	0.00	0.00	10,181.89
05 704 3012	BAND TRIP	*Previous Balance				752.93
		*Ending Balance:	0.00	0.00	0.00	752.93
05 704 3015	COSTA RICA TRIP	*Previous Balance				0.00
		*Ending Balance:	0.00	0.00	0.00	0.00
		Fund Total: 05	0.00	0.00	0.00	162,746.07

PAID IN FEBRUARY 2025

**PRE-APPROVED BILLS (GENERAL FUND)**

BPPD	Chk# 44610	Dwight Electricity	
	\$843.46		2/10/2026
FNBO	Chk# 44611	Pest Control	
	\$51.52		2/10/2026
Omaha Symphony	Chk# 44612	Elementary Music Field trip	
	\$360.00		2/10/2026
Cash - First Nebraska Bank	Chk# 44613	Petty cash for Postage	
	\$12.26		2/20/2026
US Bank	Chk# 44614	Credit Card Statement	
	\$3,388.18		2/20/2026
US Foods	Chk# 44615	Custodial Supplies	
	\$2,214.23		2/20/2026
	\$6,869.65	<b>TOTAL</b>	

**PRE-APPROVED BILLS (DEPRECIATION)**

No Depreciation bills this month

**TOTAL**

**PRE-APPROVED BILLS (SPECIAL BUILDING)**

Select Plumbing	Chk# 1402	Pre-con work for new addition	
	\$450.00		2/10/2026
Thiele Geotech	Chk# 1403	Exploration Study/Report	
	\$9,475.00		2/24/2026
	\$9,925.00	<b>TOTAL</b>	

Payroll Register - Totals

	<u>PIK/Gross</u>	<u>Amount</u>	<u>Expense/ Employer</u>	<u>Adjustment Amount</u>	<u>Check Total</u>	<u>Payee ID</u>	<u>Payee Name</u>	
<b>Check Date:</b>	<b>03/20/2026</b>	<b>Batch Description: March PR 2026-0001</b>						
<b>Processing Month:</b>	<b>03/2026</b>	<b>Status: Calculated Successfully</b>						
<b>Checking Account ID:</b>	<b>1</b>							
<b>ADD</b>								
ACTIVITYTR Activity trips			1,515.00					
BEREAVE Bereavement Leave			147.92					
HOURLY Hourly Pay			72,376.18					
OT Overtime Pay			4,013.53					
PARASUB ParaEducator Substitute			2,050.00					
PERSONAL Personal Time			262.54					
SICK Sick Time Used			1,157.67					
SPEDRROUTE SPED Route			1,875.00					
SPORTSWORK Sports Worker			2,095.00					
SUBDRIVER Substitute Bus Driver			495.00					
SUBTEACHER Substitute			10,960.00					
TIGERKIDSC Tiger Kids Club			5,081.30					
VACATION Vacation Time			326.40					
			<hr/>					
			102,355.54					
<b>CONTRACT</b>								
C01 Contract 1			250,287.44					
C02 Contract 2			18,436.98					
C04 Title 1			1,030.90					
COACHCONT COACHING CONTRACT			19,231.41					
			<hr/>					
			288,986.73					
<b>DEDUCTION</b>								
ACCIDENT ACCIDENT		342.45			342.45	AFLACREMI	AFLAC REMITTANCE SERVICES	
ACCIDENTCO ACCIDENT-COLONIAL		169.10			169.10	COLONIAL	COLONIAL LIFE & ACCIDENT INS. CO	
CANCER CANCER		326.15			326.15	AFLACREMI	AFLAC REMITTANCE SERVICES	
CANCERCOLO CANCER-COLONIAL		44.20			44.20	COLONIAL	COLONIAL LIFE & ACCIDENT INS. CO	
COLONSTD COLONIALSTD		43.60			43.60	COLONIAL	COLONIAL LIFE & ACCIDENT INS. CO	
CRITICALIL CRITICAL		69.68			69.68	AFLACREMI	AFLAC REMITTANCE SERVICES	
DENTALPOST FAMILY DENTAL		1,245.23	1,855.28		3,100.51	BLUECROSS	BLUE CROSS BLUE SHIELD OF NE	
DENTALPRE DENTAL		291.29	220.19		511.48	BLUECROSS	BLUE CROSS BLUE SHIELD OF NE	
DEPCARE DEPENDENT CARE		416.00			416.00	EASTBTLR2R	EAST BUTLER SCHOOL DIST 2R	
HEALTH HEALTH INSURANC		1,178.98	90,929.05		92,108.03	BLUECROSS	BLUE CROSS BLUE SHIELD OF NE	
HORACEMANN HORACE MANN ANN		100.00			100.00	HORACEMAN	HORACE MANN LIFE INS CO	
HOSPPRE HOSPITAL - PRET		113.36			113.36	AFLACREMI	AFLAC REMITTANCE SERVICES	
STDISAB SHORT TERM DISA		128.86			128.86	AFLACREMI	AFLAC REMITTANCE SERVICES	
URM URM		1,139.00			1,139.00	EASTBTLR2R	EAST BUTLER SCHOOL DIST 2R	
VISION VISION		581.62			581.62	VISION	VISION SERVICE PLAN	
WADREED FTC ANNUITY		1,133.57			1,133.57	WADDELLAN	FTC	
		<hr/>						
		7,323.09	93,004.52	0.00	100,327.61			
<b>INDIVIDUAL BANK ACCOUNT DEDUCTION</b>								
HSA HSA		510.00	3,121.40		3,631.40			D
		<hr/>						
		510.00	3,121.40	0.00	3,631.40			
<b>RET DEDUCTION</b>								
NPERS RETIREMENT	354,939.03	28,395.05	28,679.11		57,074.16	RET	NEBRASKA SCHOOL RETIREMENT A SYS	
		<hr/>						
		28,395.05	28,679.11	0.00	57,074.16			
<b>TAX</b>								
FIT FIT	355,651.01	24,197.64			24,197.64	EFTPS	ELECTRONIC FEDERAL TAX PAYMENT SYSTEM	A
FUTA FUTA	389,351.31							
MEDICARE MEDICARE	384,934.14	5,581.57	5,581.57		11,163.14	EFTPS	ELECTRONIC FEDERAL TAX PAYMENT SYSTEM	A
SITNE SIT NE	355,651.01	10,518.90			10,518.90	SITNE	NEBRASKA DEPARTMENT OF REVENUE	A
SOCSEC SOC SEC	384,934.14	23,865.92	23,865.92		47,731.84	EFTPS	ELECTRONIC FEDERAL TAX	A

Payroll Register - Totals

	<u>PIK/Gross</u>	<u>Amount</u>	<u>Expense/ Employer</u>	<u>Adjustment Amount</u>	<u>Check Total</u>	<u>Payee ID</u>	<u>Payee Name</u>
<b>Checking Account ID: 1</b>							
							PAYMENT SYSTEM
SUTANE SUTA NE		389,351.31					
WCNE WORK COMP NE		384,811.77					
		64,164.03	29,447.49	0.00	93,611.52		

Net Pay: 290,950.10  
Cash Total: 545,594.79

Non - FIT Taxable Deductions	34,228.83
Non - SIT Taxable Deductions	34,228.83
Non - SOC SEC Taxable Deductions	4,600.21
Non - MEDICARE Taxable Deductions	4,600.21
Direct Deposits	294,581.50
Automatic Payments	150,685.68
Adds + Contracts + Deduction Adds	391,342.27

03/10/2026 12:12 PM

Vendor Name	Vendor Description	Amount
Checking Account ID 1	Fund Number 01 GENERAL FUND	
AMAZON CAPITAL SERVICES		792.67
APACE		2,861.44
BONGERS, SANDRA		1,042.35
BURESH LAWN CARE		1,050.00
BUTLER COUNTY HEALTH		5,621.78
CANON FINANCIAL SERVICES		4,568.59
CTF SERVICE INC		2,987.11
CULLIGAN OF COLUMBUS		662.00
DIVERSIFIED DRUG TESTING		786.00
EAST BUTLER PUBLIC SCHOOL FOUNDATION		25.00
ELECTRONIC ENGINEERING COMPANY		528.20
ESU #7		11,429.36
FLINN SCIENTIFIC INC		88.92
FRONTIER COOPERATIVE CO		5,408.97
GO PHYSICAL THERAPY		608.65
INSTRUMENTALIST AWARDS LLC		173.00
JOSTENS BIG DAY RECOGNITION LLC		51.70
KSB SCHOOL LAW		205.00
LEWIS, KATIE		417.60
LINCOLN JOURNAL STAR		540.99
LINCOLN WINNELSON SUPPLY CO		110.01
MOBILITY MOTORING		893.44
NASSP/ STUCO		385.00
NE ASSN SCHOOL BOARDS		360.00
NE SAFETY CENTER @ UNK		270.00
NRCSA		50.00
OAK VALLEY LUMBER & SUPPLY, INC		529.50
OVERHEAD DOOR COMPANY OF LINCOLN, INC		1,117.94
PAPER TIGER SHREDDING		85.00
SCHMITT MUSIC OMAHA		356.00
SCHUYLER COOP ASSOCIATION		9,957.51
SEWARD COUNTY INDEPENDENT		21.82
SPARQDATA SOLUTIONS		750.00
STEVE WEISS MUSIC INC		3,981.95
STYSKAL, CONNIE		64.00
TETEN, HALEY		1,340.75
TLC DRY CLEANERS		1,036.60
VILLAGE OF BRAINARD		4,836.82
VILLAGE OF DWIGHT		180.00
VILLAGE OF PRAGUE		26.78
WASTE CONNECTIONS OF NEBRASKA		54.88
WINDSTREAM NEBRASKA, INC.		205.55
Fund Number 01		<u>66,462.88</u>

Checking Account ID 1 66,462.88

Checking Account ID 5	Fund Number 05	ACTIVITY FUND	
AUBURN DESIGN SHOP			21.48
BOARDERS INN & SUITES - GRAND ISLAND			749.70
FERGUSON, MICHAEL			88.00
FILLMORE CENTRAL HIGH SCHOOL			190.00
HEAVICAN, KELLAN			88.00
KEYES, DARYL			125.00
KLEMENT, HALEY			125.00
KUMM, DAVID			88.00

03/10/2026 12:12 PM

Vendor Name	Vendor Description	Amount
LOURDES ACTIVITIES ASSOCIATION		85.21
MAYWOOD-HAYES CENTER PUBLIC SCHOOL		576.39
MEAD PUBLIC SCHOOLS		105.71
NEBRASKA FCCLA		1,606.00
NORTHSIDE CAFE		330.00
NSAA		2,505.12
OLIVA AUDIO-VISUAL REPAIR		469.00
OMAHA CHRISTIAN ACADEMY		0.00
OMAHA CHRISTIAN HIGH SCHOOL		187.31
S&S ACTIVEWEAR		1,803.55
SAMUELSON, EMILY		220.00
VARSITY SPIRIT FASHION		3,809.85
WEEPING WATER HIGH SCHOOL		115.91
WILD ROOTS GREENHOUSE & MARKET		2,227.09
Fund Number 05		<hr/> 15,516.32
Checking Account ID 5		<hr/> <hr/> 15,516.32

**Treasurer's Report for the Board of Education**  
**March 14, 2026**  
**Month of February 2026**

**General Fund (FNB)**

Beginning of the Month Balance	<b>\$1,335,905.13</b>
Receipts	\$1,289,928.51
Interest	\$643.94
Expenditures	\$1,212,493.38
Transfer to Bank of the Valley	\$500,000.00
End of Month Balance	<b>\$ 1,413,340.26</b>

**General Fund (BOV)**

Beginning of the Month Balance	<b>\$ 1,161,434.13</b>
Transfer from First Nebraska Bank	\$ 500,000.00
Interest	\$2425.50
End of the Month Balance	<b>\$1,663,859.63</b>

**Total of Accounts** **\$3,077,199.89**

**MCAULIFFE PRIZE 12 MONTH (due 04/5/26)** **\$564.48**  
**BANK OF THE VALLEY 12 MONTH** **\$454,587.59**

**Special Building Fund (ENB)**

Beginning of the Month Balance	<b>\$331,781.56</b>
Butler County Taxes	\$181,605.69
Saunders County Taxes	\$40,490.44
Seward County Taxes	\$4,222.37
Misc Deposit	\$00.00
Receipts	\$226,492.76
Interest	\$174.26
Expenditures	\$450.00
Transfer from Bank of the Valley	\$0.00
End of Month Balance	<b>\$557,824.32</b>

**Special Building Fund (BOV)**

Beginning of the Month Balance	<b>\$272,372.92</b>
Transfer to First Nebraska Bank	\$0.00
Receipts	\$454,587.59
Interest	\$608.47
End of the Month Balance	<b>\$727,568.98</b>
<b>Total of Accounts</b>	<b>\$1,285,393.30</b>

**Qualified Capital Purpose Undertaking Fund**

Beginning of the Month Balance	<b>\$139,051.06</b>
Receipts	\$35,169.49
Interest	\$60.63
Expenditures	\$0.00
End of Month Balance	<b>\$174,220.55</b>

**Student Fees Fund**

Beginning of the Month Balance	\$7,711.26
Receipts	\$0.00
Service Charge	\$3.00
Expenditure	\$200.00
End of Month Balance	\$7,511.26

**Depreciation Fund**

Beginning of the Month Balance	\$348,194.33
Receipts	\$694.48
Transfer	\$0.00
Interest	\$694.48
Expenditures	\$0.00
End of Month Balance	\$348,888.81

**Employee Benefit Fund**

Beginning of the Month Balance	\$11,183.21
Receipts	\$0.00
Transfer	\$0.00
Interest	\$4.29
Expenditures	\$0.00
End of Month Balance	\$11,187.50

**Nebraska Liquid Asset Fund**

Beginning of the Month Balance	\$0.00
Receipts	\$0.00
Interest	\$0.00
Expenditures	\$0.00
End of Month Balance	\$0.00

**Activity Fund**

Beginning of the Month Balance	\$188,257.65
Receipts	\$32,450.36
Interest	\$70.13
Expenditures	\$30,403.29
End of Month Balance	\$190,304.72
First Nebraska Bank - 18 mo (Close UP CD# 5518)	\$2,616.58

**Lunch Fund**

Beginning of the Month Balance	\$99,577.83
Receipts	\$11,807.16
Interest	\$37.94
Expenditures	\$21,112.30
End of Month Balance	\$90,272.69



## LANMAN Partnership Technology Support Service Agreement

THIS AGREEMENT is made by and between School / District No. East Butler Public School / 12-0502 in the County of Butler known as East Butler Public School in the State of Nebraska, and Educational Service Unit 7 (ESU 7), Columbus, Nebraska on the date signed by the school superintendent.

Whereas, Nebraska Department of Education Rules and the Statutes of Nebraska authorize the delivery of certain programs and services by School Districts through contracts with ESU 7; and, Whereas, the School District and ESU 7 desire to enter into a contract for the delivery of certain services hereinafter detailed, it is the purpose of this Agreement to evidence the contract and understanding of the parties. Therefore, in consideration of the mutual agreements hereinafter set forth, the parties agree as follows:

- 1. Term of Agreement.** This Agreement shall be in effect for a period of ten months to begin August 1, 2026 and end May 31, 2027 unless early termination is mutually agreed upon by both parties.
- 2. Scope of Services.** Support Services are limited to support for Local Area Network related issues inside the school district's firewall. Hours of service are between 7:30am - 5:30pm Monday through Friday, and a work day is limited to a maximum of 8 hours. Additional hours or a temporary change in hours of service may be requested upon three (3) business days written notice to the other party. All hours provided in addition to the amount stated herein will be billed on an hourly basis at the same rate as provided herein.

3. **Fees & Payment Schedule.** ESU 7 agrees to deliver Local Area Network support services to the contracted school district per a scheduled basis based on support rates outlined in this agreement. Fees for services rendered will be invoiced to the school district a month in arrears and will become due and payable within thirty (30) days of invoice date.

Fees are based on the annual cost of salary, benefits, travel, equipment and training expenses related to obtaining qualified staff to produce the service. The scope of services and the fees shall be reviewed annually to address any necessary adjustments or modifications.

4. **Schedule.** ESU 7 will offer this service on a 192-day basis starting on August 1, 2026 and commencing May 31, 2027. School Districts wanting to participate will need to determine how many days of service are needed prior to the start of the agreement to allow ESU 7 to staff accordingly. School Districts may pick which day of the week they would like to receive services on a first-come, first-serve basis.

2026 – 2027 LANMAN Partnership Calendar					
	Monday	Tuesday	Wednesday	Thursday	Friday
August	4	3	4	4	4
September	3	5	4	4	4
October	4	4	4	5	4
November	5	4	3	3	3
December	3	3	3	3	3
January	4	4	4	4	4
February	4	4	3	4	3
March	4	5	5	4	3
April	4	4	3	5	5
May	4	3	4	4	4
Total Days	39	39	37	40	37
Cost per Day	\$550	\$550	\$550	\$550	\$550
Annual Cost	\$21,450	\$21,450	\$20,350	\$22,000	\$20,350

5. **Closings & Absences.** In the event where the School District is closed or otherwise unavailable on a pre-scheduled day, the School District will still be assessed a fee for services. Policies regarding sick leave, personal leave, vacation, or bereavement shall be determined by the ESU 7. Absences due to illness, personal leave, vacation or bereavement are billable to the school district.
6. **Personnel Choice.** ESU 7 retains the right to designate personnel to provide services.
7. **Non-Payment.** If for any reason the school district does not pay as agreed, ESU 7 may cancel this contract forthwith, without notice, refuse further services to said district, but the district shall not be relieved from paying for services rendered by the ESU 7 to the said district to the date of termination of service.

8. **Point of Contact.** The School District agrees to identify an Authorized Point of Contact (POC) and to communicate all service requests only through the POC to the ESU 7 Network Operations Department.
9. **Service Deadline.** It is agreed this contract between ESU 7 and the school district must be signed by the school district representative and returned to ESU 7 by **April 1, 2026** to allow ESU 7 to advertise for and obtain qualified personnel to produce the service.
10. **Indemnification.** In no event will ESU 7 be liable for any damages, lost savings, or other actual, direct, incidental, or consequential damages, including, but not limited to, damages arising from: the use, loss of use, or performance of the services provided hereunder; any data breach, identity theft, or similar loss relating to technology use; or any claim against the School District or ESU 7 by any other party arising hereunder. The School District shall indemnify and hold ESU 7 (and its directors, officers, employees, and agents) harmless from and against any and all such actions or claims. As a condition to such defense and indemnification, ESU 7 will provide the School District with prompt written notice of the claim and permit the School District to control the defense, settlement, adjustment or compromise of any such claim. ESU 7 may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because the School District does not assume control, the School District will bear the expense of such counsel. ESU 7 shall have no authority to settle any claim on behalf of the School District.
11. **Limitation of Liability.** ESU 7'S LIABILITY HEREUNDER FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO MONIES ACTUALLY PAID BY THE SCHOOL DISTRICT TO ESU 7 FOR SERVICES HEREUNDER. ESU 7 SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (i) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (ii) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES.

**School District’s Selection of Support Services:**

School District agrees to budget for and participate in the LAN Manager Partnership Support Service and be billed by ESU 7 on a monthly basis for such services. The School District elects to receive support services on the following selected days and based on the schedule outlined above.

- Monday
- Tuesday
- Wednesday
- Thursday
- Friday

Total Annual Amount \$43,450.00

This Agreement shall be binding upon the parties hereto and their successors. The persons executing this Agreement on behalf of the respective parties specifically acknowledge and represent that they have valid authority to bind the party for whose benefit this Agreement has been executed.

**AUTHORIZED POINT OF CONTACT INFORMATION (POC)**

**Primary POC:**

<u>Mike Eldridge</u> Name	<u>meldridge@ebutler.esu7.org</u> E-mail Address	<u>402-545-2081</u> Phone Number
------------------------------	---	-------------------------------------

**School District Signature:**

Date: \_\_\_\_\_  
Signature \_\_\_\_\_

Michael Eldridge  
Printed Name

**ESU 7 Signature:**

Date: \_\_\_\_\_  
Signature \_\_\_\_\_

\_\_\_\_\_  
Printed Name



## EAST BUTLER PUBLIC SCHOOLS

P.O. Box 36  
212 South Madison Street  
Brainard, NE 68626

Phone: (402) 545-2081  
Fax: (402) 545-2023

The East Butler Public School is seeking bids for mowing grass on school property. Each specified area must be bid individually, with a bid for total mowing being demonstrated at the bottom.

**BIDS SHOULD BE MADE PER MOWING, NOT AN HOURLY RATE.**

AREA	TOTAL
Dwight Football Field	\$120
Dwight School	\$ 50
Brainard Track/Softball Field	\$ 100
Brainard Practice Field	\$ 70
Brainard School	\$ 60
<b>TOTAL</b>	<b>\$ 400</b>

### BIDDER INFORMATION

Submitted By:	Heath Kriegler
Business Name (if applicable)	Kriegler Lawn & Landscape
Phone Number	402-312-1679
Email Address	Krieglerlawnandlandscape@gmail.com
Date	3/4/2026



## EAST BUTLER PUBLIC SCHOOLS

P.O. Box 36  
212 South Madison Street  
Brainard, NE 68626

Phone: (402) 545-2081  
Fax: (402) 545-2023

The East Butler Public School is seeking bids for mowing grass on school property. Each specified area must be bid individually, with a bid for total mowing being demonstrated at the bottom.

**BIDS SHOULD BE MADE PER MOWING, NOT AN HOURLY RATE.**

AREA	TOTAL
Dwight Football Field	150
Dwight School	50
Brainard Track/Softball Field	200
Brainard Practice Field	50
Brainard School	50
<b>TOTAL</b>	<b>500</b>

### BIDDER INFORMATION

Submitted By:	Logan Buresh
Business Name (if applicable)	Buresh lawn care
Phone Number	402-934-8882
Email Address	Bureshlawn@ gmail.com
Date	3/5/20

### CRC Classified Salary Comparisons

School	Custodians			Kitchen			Paras			Bus Drivers		Secretaries		
	FTE	Wages	Benefits	FTE	Wages	Benefits	FTE	Wages	Benefits	FTE	wage/route	FTE	Wages	Benefits
B-D 2024-2025 Updated 02/25/2025	Year 1	\$19.55	Family Health	2 FTE	\$16.00	Fam Health	Year 1	\$17.05	100% Sgls	5	\$34.40/route	bookkpr	\$56,400.00	fam hlth/dental
	Year 2	\$19.80	Single Dental			Single Dental	Year 2	\$17.30	Hlth/Dent		\$21.69/activity hr	1	\$20.60	Fam Hlth/Sgl Dntl
	Year 3	\$20.05					Year 3	\$17.50			1	1	\$16.70	Fam Hlth/Sgl Dntl
Cross County updated 4/9/24	1 Head Maint.	\$67,500	Single hlth/dental	Head Cook	\$28.00	Single Insurance/dental for head cook	12	\$15.00-24.00	none		No bus drivers	1 Bookkeeper	\$30.00	Single ins./dental
	3	\$20.00-\$25.00	Single hlth/dental	3.5 staff	\$18.00-\$23.00							3 Secretaries	\$24.00-29.00	None
Dorchester 2024-2025 updated 10/11/24	Head	\$26.00	single hlth/dental	Head	\$19.60	single ins	8	15.45-18.00	n/a	2				
	asst (2)	\$21.00	single hlth/dental	asst	\$16.15	no ins					\$26.25	Bookkeeper	\$24.75	single hlth/dental
				asst	\$14.71	no ins					4 hrs. guaranteed/day	Secretary	\$19.60	single hlth/dental
East Butler Updated 3/25/25	4	15.00-28.41	single hlth/dental	4.5	15.00-18.08	single hlth/dental	16	15.00-18.40	single hlth/dental	6	1,805.15/month	4	15.00-23.02	single hlth dental
											20.00/hour act. trip			
Hampton 24/25 Updated 2/25/25	1	\$19.00	Single Ins.	1	\$19.85	Single Ins.	4	\$15.98-\$17.82	No Ins.	2	\$40.79 a route/\$14.75 per hour activity driving	1	\$21.05	Vision Ins. only
	0.5	\$19.85		0.5	\$15.82	No Ins.								
High Plains 23-24 Updated 3/26/24			full insur. (full-time) no insur (pt-time) +2 ATS cleaning service employees								1/2 sing. Ins. for grandfathered staff No Ins. for the rest			
	3.5	\$15.66-\$23.00		4 FTE	\$16-\$18	No Ins.	6 (37.5hrs)	\$15-\$17		4	\$36-\$37 a route/\$15-\$16 shuttle & activities	3 (40hrs) 2 are 12 mo. 1 is 10 mo.	\$17.85-\$23	Full Ins (only for 12 mo)/10 mo. no Insurance
McCool (2025-26) Updated 2/19/25	1	\$16.14	No insur.	2	\$15.82-\$17.40	No insur	10	\$18.82-\$17.40	No Insur	4	\$80.70 per day - two routes	2	\$36,129-\$40,860	single ins.
	0.5	\$17.40	No insur.	Head	\$21.29	No Insur					\$17 per hour for activity route	Bus. Manager	\$56,700	single ins.
	Head	\$55,620.00	fam. ins.											
Meridian 24-25 updated 3-25-24	1	\$59,664.00	Em&Sp H&D	Head	\$20.00	Single	2	\$14.00	Single		\$47.50/route	1	\$3,406 Month	Couple Insurance
	1	\$18.23	Single Ins.	1	\$14.00	Single	2	\$14.00	Single	5	(2 routes per day)	1	\$19.52	Single
	3 summer	\$10.00	none	0.3	\$14.00	none	1	\$14.00	Single		\$17.28/hr activity	1	\$16.22	Single
							1	\$14.00	Single		\$32.51/SPED route (1 route per day)			
Nebraska Lutheran updated 5/13/2021	1	\$18.00	none	1 head	\$17.00	none	none			1	Teachers do this, no extra pay	1	\$18.50	none
	0.5	\$13.50	none	1	\$14.00	none					no routes, just activities	1	\$18.00	none
				1	\$13.25	none								
Osceola (24-25 wages) updated 2/25/25	1	\$26.22	Family	1	\$17.81	Family	1	\$17.00	None	5	\$30/hr routes	1	\$16.16	Family
	1	\$17.66	Family	3	\$15.00	None	6	\$15.00	None		\$15/hr activities and wait	2 bookkeepers / secretaries	\$19.40/\$21.00	Family
	1	\$17.23	Family					\$15.00 base with % increase every year						
	1	\$16.68	Family											
Shelby-Rising City 25-26 Update 2/19/25	Head 1.0 and maintenance	\$73,320	Full Single + Transportation Dir.	1 Head	\$19.00	None	11	15.00-18.50	1/2 paid by school (single) if wanted		Bus Maintenance/Repair / \$21.25 Hour	Bookkeeper	\$29.00	Single
	Cust. 1.0	\$19.25	Employee Only	1 Asst	\$16.00	None		Yearly increase based on CPI usually 3-5%			Route / \$86 Day (\$43.00 per route)	HS/MS	\$22.25	Single
	Cust. 1.0	\$22.50	Employee Only	1 Asst	\$15.00	None		1:1 Para gets \$1/ Hour added to their base rate			Activities-Van-Shuttle / \$16.75/Hr.	Activities/Lunch	\$23.00	None
	Service Master for evenings	\$34.46	None	1 Asst	\$17.75	None		FTE's= SPED 11.0			ELEM.	\$20.00	Single	
										\$15.50/SPED				
Shickley (24-25) updated 2-19-25	Head Maint./Cust (1)	\$19.50	Emp	1 Head	\$19.25	Single	3	\$16.50	none	3	\$38/routes	Bookkeeper	\$20.50	single
	Custodiam (1)	\$18.50	Emp	2	\$18.00	none		\$16.00	none		16-18hr/activity	1	\$17.50	single

**East Butler Public School  
Classified Salaries  
2025-2026**

8/22/25  
2.7%

**\$ PER HOUR      HOURS PER WEEK      WEEKS      YEARS AT EB**

**Administrative Assistants**

Patty Coufal	\$18.04	40	38	26	
Kim Fuehrer	\$23.64	40	52	47	
LuAnn Hofpar	\$20.40	40	52	36	
Karen Sousek	\$21.00	40	52	6.5	
Kim Fuehrer	\$2,474.26	\$687.57	\$1,837.40	4.5% of Base Salary	
	Recording Secretary	Census	Adviser		
LuAnn Hofpar	\$687.57	\$1,837.40	4.5% of Base Salary		
	Census	Adviser			
Karen Sousek	\$1,400.56				
	Treasurer				

**Maintenance/Custodial**

Brian Cho	\$18.49	40	52	2	
Kim Heiser	\$17.92	40	52	29	
Taylor Pollock	\$28.41	40	52	16	
Nancy Steager	\$17.92	40	52	30	
Yvonne Rezac	\$15.41	40	52	6	

**Bus Drivers**

Brian Cho	\$1,805.15/Month		10 Months	2	Activity Trips \$20.00 Per Hour
James Geewe	\$1,805.15/Month		10 Months	5	\$20.00 Per Hour
Tom Laing	\$1,805.15/Month		10 Months	9	\$20.00 Per Hour
Gary Polacek	\$1,805.15/Month		10 Months	23	\$20.00 Per Hour
Taylor Pollock	\$1,805.15/Month		10 Months	16	\$20.00 Per Hour
Emily Kubik	\$1,805.15/Month		10 Months	1	\$20.00 Per Hour
Connie Styskal	\$1,805.15/Month		10 Months	5	\$20.00 Per Hour
Substitute Bus Driver	\$45.00 Per Route				

**Kitchen Staff**

Sonny Brokaw	\$15.41	40	38	7	
Deb Kost	\$15.41	40	38	21	
Jennifer Meister	\$15.00	40	38	1	
Tracy Patocka	\$18.08	40	38	4	
Kathy Ptacek	\$15.41	22.5	38	7	
Sub Cook	\$15.41				

**Paraeducators**

Sammi Beckstead	\$18.90	38.75	36	22	
Jordan Fuehrer	\$16.95	38.75	36	5	BA
Kyla Geewe	\$16.97	38.75	36	10	AD
Danielle Hicks	\$15.00	38.75	36	1	
Rachel Hines	\$16.18	38.75	36	12	AD
Emily Kubik	\$15.41	38.75	36	4	
Hayleigh Larsen	\$15.00	38.75	36	1	
Nicole Malina	\$16.18	38.75	36	4	AD
Donna Orta	\$15.41	38.75	36	3	
Shannon Pleskac	\$15.82	38.75	36	15	
Shannon Prochaska	\$16.66	38.75	36	8	
Kim Rhynalds	\$16.18	38.75	36	6.5	AD
Erin Roh	\$15.00	38.75	36	1	
Connie Styskal	\$16.18	38.75	36	8	AD
Jamie Tejral	\$15.41	38.75	36	4.5	

*DEGREE - Para/Admin Prof      AD - \$15.75/HR      BA - \$16.50/HR      MA - \$17.00/HR*

**Nurse**

Angie Sisel	\$34.79	40	36	4.5	
Tigers Kids Club	\$25.00				
Sumer School	\$25.00 - Teachers	Paras - Current Rate			
Substitute Teacher	\$160.00/day	\$175.00/day - long term			
Paraprofessional Sub	\$100.00/day				



# Proposal

**Proposal Number**

2112440588

**Account Number/Name**

42098

EAST BUTLER PUBLIC SCHOOLS

**Created On**

03/05/2026

**Created By**

Jason Trotter

Thank you for creating your proposal, details are provided below. You can access this proposal from your Apple Store for Education Institution by searching proposal number 2112440588.

Item	Product / Description	Total Quantity	Unit Price	Total Price
1	MD3Y4LL/A iPad Wi-Fi 128GB - Silver	25	329.00	8,225.00 USD
Subtotal				8,225.00 USD
Estimated Tax				0.00 USD
Total				8,225.00 USD

Please note that your order subtotal does not include sales tax or rebates. Sales tax and rebates, if applicable, will be added when your order is processed. Your order total may include estimated sales tax that is subject to change at the time your order is processed.

## How to Order

If you would like to convert this Proposal to an order, log into your Apple Store for Education Institution and select 'Proposal' from the pull-down menu. Search for this Proposal by entering the Proposal Number referenced above.

**Note:** A Purchaser login is required to order. Visit your Apple Store for Education Institution to login or create your Purchaser Apple Account.

The prices and specifications above correspond to those valid at the time the Proposal was created and are subject to change. Purchases are subject to the terms and conditions of your agreement with Apple and the Apple Store for Education Institution.

Copyright © 2026 Apple Inc. All rights reserved.



# Proposal

**Proposal Number**

2112440591

**Account Number/Name**

42098

EAST BUTLER PUBLIC SCHOOLS

**Created On**

03/05/2026

**Created By**

Jason Trotter

Thank you for creating your proposal, details are provided below. You can access this proposal from your Apple Store for Education Institution by searching proposal number 2112440591.

Item	Product / Description	Total Quantity	Unit Price	Total Price
1	MDHL4LL/A 13-inch MacBook Air: Apple M5 chip with 10-core CPU and 8-core GPU, 16GB, 512GB SSD - Silver (Packaged in a 5-pack)	55	979.00	53,845.00 USD
Specifications				
<ul style="list-style-type: none"> <li>• M5 chip: Apple M5 chip with 10-core CPU, 8-core GPU, and 16-core Neural Engine</li> <li>• Unified Memory: 16GB unified memory</li> <li>• SSD Storage: 512GB SSD storage</li> <li>• Power Adapter: 40W Dynamic Power Adapter with 60W Max</li> <li>• Pro Apps Bundle for Education: None</li> <li>• Keyboard Language: Backlit Magic Keyboard with Touch ID - US English</li> <li>• Accessory Kit: Accessory Kit</li> </ul>				
2	SLTH2LL/A	55	229.00	12,595.00 USD
Subtotal				66,440.00 USD
Estimated Tax				0.00 USD
Total				66,440.00 USD

Please note that your order subtotal does not include sales tax or rebates. Sales tax and rebates, if applicable, will be added when your order is processed. Your order total may include estimated sales tax that is subject to change at the time your order is processed.



create engaging spaces

## East Butler PS - 7x75ProSeries, 7 BalanceBox, 2 Additional IFP Install - 4-28-25

Proposal No. 58696

03-06-2026

### Prepared for:

East Butler Public Schools  
212 S Madison St  
PO Box 36  
Brainard, NE 68626 USA

### Contact:

Karen Sousek -- AP  
*Bookkeeper*  
ksousek@ebutler.esu7.org  
(402) 545-2081

### Prepared By:

KCAV - Omaha  
11819 Stonegate Drive, Ste 100, LTL shipments require liftgate  
Omaha, NE 68164  
( ) -

### Sales Rep:

Jason Foster  
AV Sales Consultant - NE  
jfoster@k cav.com  
(800) 798-5228 x162

At KCAV, we help our clients succeed by providing audio-visual solutions that deliver results. We look forward to partnering with you to create engaging spaces to learn, work and share!

## COMPANY HISTORY

Kansas City Audio-Visual (KCAV) was founded in 1953 by Mickey Adler, who offered his clients innovative solutions of the time - dictating machines, opaque projectors, and overhead projectors. Today, KCAV remains family-owned and run by Jerry & Lisa Bernard, Mickey's son-in-law and daughter. And while technology has definitely changed since 1953, KCAV's commitment to the customer has not.

At KCAV, we are committed to:

- Integrity at the core of everything we do.
- Innovative, reliable solutions that help our customers succeed.
- Long-term relationships based on trust, proactive communication, and high-quality service.

In 2018, KCAV acquired Engaging Technologies, a family-owned audio-visual technology company based in Omaha, further expanding KCAV's footprint into Nebraska and Iowa. Now, over sixty-five years later, KCAV is one of the largest suppliers of audio-visual technologies in the Midwest.

## THE KCAV TEAM

We believe that people choose to do business with people. Our business model is based on offering our clients personal service from AV professionals at every stage of your experience. The KCAV Sales Team is distributed throughout Kansas, Nebraska and Missouri, allowing us to offer local, personalized service. Our Sales Team will partner with you, investing the time and resources to understand your needs, goals and realities. With that understanding, the KCAV Team will design, install, and support solutions that will transform your learning, working and sharing spaces - including meeting and collaboration spaces, classrooms and training rooms, and larger venues such as auditoriums, gymnasiums, and more.

Our full-time, industry-certified Design and Engineering Team takes pride in providing cost-effective systems that provide quality, worry-free operation. Big or small, each project receives individual attention from experienced professionals. In addition, our strong relationships with hundreds of manufacturers allow us to offer the latest technology at a cost you will appreciate.

Our KCAV Operations Team includes full-time engineers, project managers, and technical staff that hold industry-recognized certifications and strive to provide you with an exceptional client experience. In addition to providing thorough, quality, on-site installation, we place great value on providing you with proactive communication so that there are no surprises throughout the process.

After installation is complete, you'll receive on-site training in the operation of your installed systems. In addition, we offer optional high-quality professional development delivered by our Implementation Specialist, a trained educator experienced in helping users of all levels better utilize your technology investment.

Finally, the KCAV Service Team will provide you with "peace-of-mind" support, offering both telephone-based support with after-hours paging service, as well as on-site service to maximize the utilization of your new audio-visual system.

We look forward to welcoming you to the KCAV family of clients.

**I. SUMMARY:** KCAV will install (7) 75" Clevertouch Pro Series Interactive Flat Panels (IFPs) and (2) Owner Furnished IFPs in locations to be determined (Dwight). Projector and IWB Removal will take place before panel installation in these classrooms by the East Butler PS Staff.

## II. SYSTEM DESCRIPTION:

### A. Classrooms

**Functionality Description:** Classrooms will be equipped with interactive technology to support digital learning, student engagement, and instructional flexibility. The system will be utilized by teachers and students for interactive lessons, presentations, and classroom activities.

#### Source Devices:

- Laptop HDMI (x1). Wireless casting included.

#### Displays:

- (7) Clevertouch 75" Pro Series Interactive Flat Panels mounted on Balance Box mounting systems (1 per room, locations to be shared by client).
- (2) Owner Furnished Interactive Panels mounted on classroom wall from mobile carts (Dwight, rooms to be determined by client)

#### Audio:

- Integrated speakers in IFP for classroom audio enhancement.

#### Conferencing:

- N/A

#### Controls:

- Touchscreen control via IFP interface.

#### Equipment Location:

- IFP locations to be determined by client prior to installation.

**III. EXCLUSIONS:** The following work is not included in our Scope of Work:

- All conduit, high voltage, wiring panels, breakers, relays, boxes, receptacles, etc.
- Concrete saw cutting and/or core drilling.
- Fire wall, ceiling, roof, and floor penetration.
- Necessary gypsum board replacement and/or repair.
- Necessary ceiling tile or T-bar modifications, replacements, and/or repairs.
- All millwork (moldings, trim, cut-outs, etc.).

- Patching and Painting.
- Permits (unless specifically provided for and identified within the contract).

IV. **CONSIDERATIONS:** Unless otherwise noted or negotiated, any removal of existing equipment and trash related to new equipment will be taken to a central location within the building. The final disposal will be the responsibility of the client/owner.

**\*\*Customer approval of this Scope of Work will be confirmed in the Signature section of this proposal.\*\***

**DRAFT**  
**- FOR BUDGETARY PURPOSES ONLY -**  
**PLEASE WAIT FOR A FINAL QUOTE TO ISSUE A PO.**

# MATERIALS & SERVICES

## OTHER ITEMS

Boxlight	1541351	CLEVERTOUCH PRO SERIES 75"	7.00	\$1,950.00	\$13,650.00
Boxlight	OFE	Existing 65" IFP	2.00	\$0.00	\$0.00
BalanceBox	481A70	BalanceBox 400 Universal Flatscreen / VESA Interface - Up to 800x600mm / Direct to 481A47002	7.00	\$99.00	\$693.00
BalanceBox	480A12	BalanceBox 400-70 for touchscreen displays 90.4-152lbs	7.00	\$858.97	\$6,012.79
KCAV	SHIP-HANDLING	Shipping & Handling of all above items	1.00	\$1,085.83	\$1,085.83
KCAV	IE-INST-IFP-BB (1-10)	Installation of IFP and BalanceBox (qty 1-10)	7.00 OPTIONAL	\$667.00	\$4,669.00 NOT INCLUDED
KCAV	IE-INST-IFP-1-10	Installation - IFP - 1-10 Rooms - No Wiring	2.00 OPTIONAL	\$433.00	\$866.00 NOT INCLUDED
KCAV	IE-INST-TRAV	Installation - IE Travel Fee	2.00 OPTIONAL	\$69.33	\$138.66 NOT INCLUDED
KCAV	PROJMGMT	Project Management	3.00 OPTIONAL	\$150.00	\$450.00 NOT INCLUDED
<b>OTHER ITEMS TOTAL:</b>					<b>\$21,441.62</b>
<b>OTHER ITEMS OPTIONAL TOTAL:</b>					<b>\$6,123.66</b>
<b>PROPOSAL TOTAL</b>					<b>\$21,441.62</b>
<b>TOTAL OPTIONAL ITEMS</b>					<b>\$6,123.66</b>

## SERVICE COVERAGE

PART NUMBER	MANUFACTURER	PART DESCRIPTION	QTY	UNIT PRICE	TOTAL PRICE
WARRANTY	KCAV	Workmanship Warranty (90 days)	1.00	\$0.00	\$0.00
<b>TOTAL SERVICE COVERAGE</b>					<b>\$0.00</b>

**Subtotal:** \$21,441.62

**Tax:** \$0.00

**TOTAL:** **\$21,441.62**

**Optional Items (tax not included):** \$6,123.66

# GENERAL TERMS AND CONDITIONS

These Terms & Conditions are by and between Kansas City Audio-Visual, Inc. (the "Company") and the undersigned Customer (the "Customer").

- 1. GRANT OF SECURITY INTEREST:** By signing below, Customer acknowledges that this contract serves as a security agreement within the meaning of the Uniform Commercial Code (UCC), and Customer agrees that Company may file such UCC financing statements as are appropriate to perfect Company's security interest in the equipment.
- 2. INSTALLATION:** Customer hereby grants to Company or its agent the right to install the equipment, to the extent such installation is specified above. Customer represents and warrants that all necessary governmental and third-party approvals for installation of the equipment have been obtained, unless otherwise specified. Delays in installation caused by public agencies, manufacturers, suppliers, acts of God, pandemics, strikes or other union bargaining, and all acts not directly attributable to Company, shall not in any way affect the obligations of Customer, and Company's obligations with respect to such installation shall be suspended during the event causing the delay. Company shall not be responsible for damages from any such delay.
- 3. TAXES, FEES, AND PERMITS:** Customer agrees to pay Company all applicable Federal, State, and local taxes, excises, permits, and fees. All dollars in this Agreement are pre-tax, unless otherwise stipulated.
- 4. SHIPPING:** All shipments of equipment are FOB Company's distribution facilities.
- 5. RESPONSIBILITY:** Until balance is paid, Customer agrees to take proper care of the equipment on premises and to be responsible for any damage or loss by fire, theft, casualty, or any other cause whatsoever, and will not permit or suffer same to be removed from the place of its location at address of Customer, without written consent of Company or assigns.
- 6. GENERAL:** This Agreement constitutes the sole and entire understanding between the parties with respect to the subject matter hereof and supersedes all prior conversations, agreements, representations and promises, whether verbal or written. No modification of this Agreement shall be valid, unless made in writing and properly signed by each party. The provisions of this Agreement are severable; if any clause or provision shall be held invalid or unenforceable, in whole or in part, then such invalidity shall attach only to such clause or provision. Customer shall pay all attorneys' fees and other costs and charges incurred by Company in the collection of debt.
- 7. INFRASTRUCTURE:** In the event that Company is installing equipment or systems that require connectivity to the Customer's network including, but not limited to, VOIP connectivity, internet access, wireless network access, firewall traversal, and/or port forwarding, Company may advise Customer as to the network requirements, but any responsibility for infrastructure on the part of Company stops at the installed equipment's network jack or wireless connection and configuration of the network settings on the device sold by Company. Company is not responsible for updating network settings in the event the Customer's network changes. If the Customer's network is not "Plug and Play," then any custom network settings must be supplied by Customer to Company before the start of installation.
- 8. INSTALLATION AND SITE PREPARATION:** Installation (field assembly, interconnection, equipment calibration and checkout) is to be performed by the Company's trained technical employees. The Company shall be entitled to employ subcontractors and/or agents to assist in or carry out, in whole or in part, the installation. In the event installation by Company employees is prevented by trade unions, Customer shall arrange with the trade unions at its own expense to complete installation. The Company is thereafter liable only for supervision of installation.

Company agrees to coordinate with other trades to facilitate satisfactory work progress. If Company's work in progress is impeded by other trades and/or contractors (excluding Company's own subcontractors) or by scheduling delays due to Customer, time delays in the final installation as well as additional charges including labor, travel and reasonable expenses may result.

Customer shall be responsible for preparing, at its own expense, the installation site in accordance with the Company's instructions, including the requirements specified in the proposal. Company shall not be responsible for any high-voltage electrical work, ceiling modifications, structural modifications, or mechanical systems modifications.

Unless otherwise specified, Customer shall provide the Company with source code for any non-Company programmed remote control system required to be modified under the terms of this Agreement.

Customer shall provide the Company with reasonable access to the installation site before delivery, based upon a mutually agreed upon project schedule, for purposes of determining site readiness for installation. Customer will designate an individual on Customer's staff to serve as a contact person for all site preparation and installation issues. Customer shall indemnify the

Company against any loss, damage or claim arising out of the condition of the storage and installation premises.

Customer shall obtain at its expense and keep effective all permissions, licenses, and permits whenever required for the installation and/or use of the equipment and the premises where the equipment shall be situated.

#### 9. LIMITATION OF LIABILITY:

(a) **Cap on Liability:** Except as otherwise provided in this Agreement, the total aggregate liability of either Party, whether in contract, tort (including negligence), or otherwise, shall not exceed the total fees paid by Client during the twelve (12) months immediately preceding the event giving rise to such liability.

(b) **Exclusion of Damages:** Neither Party shall be liable for any consequential, incidental, indirect, exemplary, punitive, or special damages, including loss of profits, revenue, goodwill, or business interruption, even if advised of the possibility of such damages.

(c) **Exceptions:** These limitations shall not apply to indemnification obligations, breaches of confidentiality, gross negligence, willful misconduct, or liability that cannot be limited by law

10. LIMITATIONS OF WARRANTY - PRODUCTS OF OTHERS: Unless otherwise specified, no warranty is provided for "consumables," including batteries, lamps, glassware and evacuated devices.

Company's sole obligation with respect to any material or part identified in the quotation, literature, or specifications furnished to the Customer as manufactured or supplied by others, shall be to pass on to Customer the applicable manufacturer's warranties, if any.

11. CHOICE OF LAW AND SEVERABILITY: This agreement shall be interpreted in accordance with and governed in all respects by the law of Missouri. Venue shall be Kansas City, Missouri. Should any provision of this Agreement be found invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other provision contained herein.

12. PROJECT/ORDER CANCELLATION: Customer must notify Company via both orders@kcav.com and sales representative in writing to cancel a project or order. Upon receipt of the notice, Company will acknowledge in writing Customer's order cancellation and provide the official date of cancellation.

Projects that are cancelled within sixty (60) calendar days of notification for Company to proceed with the work are subject to a 25% restocking charge (plus return shipping to the manufacturer) on all hardware and are subject to payment for professional services provided by Company prior to the date of cancellation (engineering/design services, project management, etc.).

Projects that are cancelled sixty-one (61) or more days after Company has been notified to proceed are subject to full payment for all hardware that has been received by Company and Customer in conjunction with the order. Company will make reasonable effort to obtain exceptions from suppliers for the return of equipment with restocking charges and will notify customer of any such options. Additionally, client is responsible for payment of professional services provided by Company prior to the date of cancellation (engineering/design services, project management, etc.).

Custom items may be noncancellable and are not returnable.

13. RESTOCKING FEES: In the event Customer wishes to return any returnable equipment, Customer agrees to pay restocking fees of 25% of the sale price in addition to any applicable shipping charges.

14. CHANGE ORDERS: Any changes of scope made to the design of the system or the contractual agreements in implementation or functionality will require a mutually agreed upon "Change Order" form signed by an authorized representative for the Customer.

15. TARIFFS: Due to the recent US imposed tariffs on goods and supplies, Company has included a tariff contingency budget in this proposal. Many of our suppliers manufacture their products in these countries, and Company is setting this contingency budget in place to help cover any potential unforeseen increases in hardware and cabling costs. We have been alerted by many of our manufacturing partners that an increase is imminent. To what degree and at what percentage, we are unsure at this time. Company is forecasting ahead, as best as we can, to cover these unknown increases with this contingency budget. Any part of this contingency budget not used towards hardware and cabling cost increases, due to tariffs, will be reduced from the final invoice of the project.

16. PROFESSIONAL DEVELOPMENT SERVICES: Unless specified otherwise, any purchased training or professional development services must be conducted within 12 months of placement of the sales order, unless mutually agreed upon

otherwise in writing. Company will consider any contract to deliver professional development services fulfilled on the date 12 months after placement of sales order.

17. DESIGN SERVICES: All designs are the property of the Company. If Customer contracts with the Company to implement the design, the design shall become the property of Customer. If Customer wants to use the Company's design for an RFP, bid or any other purposes without implementation by the Company, the Company will advise Customer of the fee to purchase the design. Upon payment of the fee, the design becomes the property of Customer.

18. CONFIDENTIALITY: This Agreement and all drawings, specifications, and designs are the property of the Company. Proprietary information provided to Customer (or its agents) is for the sole purpose of demonstrating the Company's capabilities and shall be held in confidence. These materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of the Company. Any effort to do so will be considered a violation of copyright law.

19. PARAGRAPH HEADINGS: The paragraph headings contained herein are for the convenience of reference only and shall not be construed to affect the interpretation or construction of any substantive provision of this Agreement.

**DRAFT**  
**- FOR BUDGETARY PURPOSES ONLY -**  
**PLEASE WAIT FOR A FINAL QUOTE TO ISSUE A PO.**

## KCAV PROJECT WARRANTY

KCAV offers a 90-day warranty on labor and workmanship, beginning on the date of substantial completion of your project. In the event there is a service issue, and it is determined that the issue is due to project workmanship, KCAV will rectify the issue at no cost to the client. KCAV offers a 90-day warranty on any manufacturer's components included in the project and purchased directly from KCAV. KCAV will work with the manufacturer and client to remove, replace, and reinstall the defective equipment at no charge to the client. KCAV supports the manufacturer's warranty on all hardware. Manufacturer warranties range in time and may be as long as five years. Most manufacturer warranties are based upon depot service. As such, the manufacturer warranty does not cover such items as travel and labor to remove defective equipment, or to reinstall replacement equipment. In the event of a service call which turns out to be related to issues outside of warranty (act of God, user-error, etc.), KCAV will submit an invoice for travel, time, and materials related to the service call. KCAV can provide more information regarding handling of hardware-based warranty situations upon request. KCAV is not responsible for warranty or support of existing Owner Furnished Equipment (OFE).

Maintenance and service agreements are available for extended periods of time. If you have interest in learning more, please contact KCAV at (service@kcav.com) for more information.

## KCAV SERVICE OPTIONS

KCAV offers three levels of hourly service, in order to address a full range of situations that require timely, high-quality service of our clients' AV system.

### Standard-Level Service

Standard-level service takes place between the hours of 8:00am - 5:00pm, Monday-Friday. Standard-level services requires a minimum of two business days' advance notice for scheduling purposes. While KCAV will make every effort to perform standard service sooner than two days from the client's request, this will not always be possible.

### Priority-Level Service

Priority-level service takes place between the hours of 8:00am - 5:00pm, Monday-Friday. Priority-level service will be performed with less than two business days' advance notice. Priority-level service is designed for time-sensitive service needs which do not allow for two or more business days' advance notice.

### After-Hours Service

After-hours service takes place outside of 8:00am - 5:00pm, Monday-Friday, and also takes place on federal holidays. After-hours service is designed for service needs which cannot be addressed during standard business hours.

Please note the following which apply to all levels of service provided by KCAV:

- Service time is portal-portal. The time is calculated from the time the service technician departs the KCAV office until the time the service technician returns to the KCAV office.
- A two-hour minimum will be charged for all service calls.
- A dispatch fee is added to each service call to account for the costs of operating the service vehicle.

1. **DELAYS:** All orders are subject to the Company's ability to make delivery at the time specified, and the Company shall not be liable for damages for failure to make partial or complete delivery. The Company shall not be liable for delays in delivery caused by forces not reasonably within Company's control (including but not limited to delays or defaults by carriers, extreme cold weather, floods, fires, storms, or other acts of God, war or act of public enemy or civil disturbance, strikes, lock-outs, shortages of labor or raw materials and supplies, action of any governmental authority, or any other force majeure event). Customer shall be liable for any added expenses incurred by the Company because of, including but not limited to, Customer's delay furnishing requested information to the Company; delays resulting from order changes by Customer; delays related to Customer's network configuration or other systems issues; or conditions affecting installation duration, off-hours or continuous workdays of 8 am to 5 pm.

2. **EQUIPMENT AND MATERIALS PRICE INCREASE:** Company shall be entitled to additional compensation from Customer in the event there is a significant increase in price of any specific item of equipment or materials of seven percent (7%) or more between the date the Agreement is signed and the date that equipment and materials are purchased for the work to be performed on the project.

3. **DELIVERY COSTS & CLAIMS:** Customer agrees to pay for all shipping or transportation costs of the equipment as and if stated on Company's proposal and/or the invoice. Company shall not be liable to Customer for any damage to or loss of equipment in transit. Company's only recourse as to such damage or loss shall be with or against carrier, and all claims must be filed with the carrier. Upon delivery, Customer must inspect and verify that contents match the packing list and are without damage. If there are any discrepancies or damages, Customer must notify Company in writing within three (3) business days, or such claims shall be waived.

4. **HARDWARE-ONLY ORDERS:** Orders over \$50,000 consisting of hardware only require a 50% down payment.

5. **INSTALLATION PROJECTS:** In keeping with industry standards, payment terms for projects over \$50,000 that involve installation are as follows:

- 50% down payment in advance of start of project
- 40% invoiced following delivery of hardware
- 10% remaining invoiced upon Substantial Completion of project

6. **PAYMENT & PAST DUE ACCOUNTS:** All payments are due within thirty (30) days of the invoice date unless an advance down payment is required on Company's quote. A finance charge of the lesser of 1.5% per month (18% - APR) or the highest rate permitted by law will be assessed on all past due accounts. Interest charged on a past due invoice will be assessed from the date of the invoice. Customer agrees to reimburse Company for all attorneys' fees and court costs in connection with default of these payment terms by Customer.

7. **CREDIT & CREDIT CARD PURCHASES:** Credit payment terms must have the prior approval of Company. Company reserves the right to stop delivery of equipment or provision of services if Customer's financial condition becomes impaired or unsatisfactory to the Company. Additionally, Company may require payment in advance or other security, and, in the absence thereof, may cancel, without liability, the unfilled portion of an order. Credit card purchases shall be subject to a four percent (4%) convenience fee where allowed.

# PROPOSAL SUMMARY

BILL TO:	SHIP TO:
East Butler Public Schools 212 S Madison St PO Box 36 Brainard, NE 68626	East Butler Elementary School-Dwight 292 N 1st St PO Box 160 Dwight, NE 68635

**Subtotal:** \$21,441.62

**Tax:** \$0.00

**TOTAL:** **\$21,441.62**

**Optional Items (tax not included):** \$6,123.66

This proposal shall become binding on the parties hereto when signed by the Customer and accepted by the Company.

By initialing here, the Customer confirms that they have read, understood and agree to the Company's Terms and Conditions.

By initialing here, the Customer confirms they have read the included Scope of Work and agree that it meets their needs. Should the Customer's needs change, the Company will provide a Contract Change Order to adjust the contract based on changes to the Scope of Work, which could include changes to Equipment, Labor and/or other charges.

CUSTOMER: **East Butler Public Schools**

**Kansas City Audio-Visual, Inc.**

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



create engaging spaces

## East Butler PS - 11x75ProSeries, 7xBalanceBox, 2 Additional IFP Install - 4-28-25

Proposal No. 58697

03-06-2026

### Prepared for:

East Butler Public Schools  
212 S Madison St  
PO Box 36  
Brainard, NE 68626 USA

### Contact:

Karen Sousek -- AP  
*Bookkeeper*  
ksousek@ebutler.esu7.org  
(402) 545-2081

### Prepared By:

KCAV - Omaha  
11819 Stonegate Drive, Ste 100, LTL shipments require liftgate  
Omaha, NE 68164  
( ) -

### Sales Rep:

Jason Foster  
AV Sales Consultant - NE  
jfoster@k cav.com  
(800) 798-5228 x162

At KCAV, we help our clients succeed by providing audio-visual solutions that deliver results. We look forward to partnering with you to create engaging spaces to learn, work and share!

## COMPANY HISTORY

Kansas City Audio-Visual (KCAV) was founded in 1953 by Mickey Adler, who offered his clients innovative solutions of the time - dictating machines, opaque projectors, and overhead projectors. Today, KCAV remains family-owned and run by Jerry & Lisa Bernard, Mickey's son-in-law and daughter. And while technology has definitely changed since 1953, KCAV's commitment to the customer has not.

At KCAV, we are committed to:

- Integrity at the core of everything we do.
- Innovative, reliable solutions that help our customers succeed.
- Long-term relationships based on trust, proactive communication, and high-quality service.

In 2018, KCAV acquired Engaging Technologies, a family-owned audio-visual technology company based in Omaha, further expanding KCAV's footprint into Nebraska and Iowa. Now, over sixty-five years later, KCAV is one of the largest suppliers of audio-visual technologies in the Midwest.

## THE KCAV TEAM

We believe that people choose to do business with people. Our business model is based on offering our clients personal service from AV professionals at every stage of your experience. The KCAV Sales Team is distributed throughout Kansas, Nebraska and Missouri, allowing us to offer local, personalized service. Our Sales Team will partner with you, investing the time and resources to understand your needs, goals and realities. With that understanding, the KCAV Team will design, install, and support solutions that will transform your learning, working and sharing spaces - including meeting and collaboration spaces, classrooms and training rooms, and larger venues such as auditoriums, gymnasiums, and more.

Our full-time, industry-certified Design and Engineering Team takes pride in providing cost-effective systems that provide quality, worry-free operation. Big or small, each project receives individual attention from experienced professionals. In addition, our strong relationships with hundreds of manufacturers allow us to offer the latest technology at a cost you will appreciate.

Our KCAV Operations Team includes full-time engineers, project managers, and technical staff that hold industry-recognized certifications and strive to provide you with an exceptional client experience. In addition to providing thorough, quality, on-site installation, we place great value on providing you with proactive communication so that there are no surprises throughout the process.

After installation is complete, you'll receive on-site training in the operation of your installed systems. In addition, we offer optional high-quality professional development delivered by our Implementation Specialist, a trained educator experienced in helping users of all levels better utilize your technology investment.

Finally, the KCAV Service Team will provide you with "peace-of-mind" support, offering both telephone-based support with after-hours paging service, as well as on-site service to maximize the utilization of your new audio-visual system.

We look forward to welcoming you to the KCAV family of clients.

**I. SUMMARY:** KCAV will install (11) 75" Clevertouch Pro Series Interactive Flat Panels (IFPs) and (2) Owner Furnished IFPs in locations to be determined (Dwight). Projector and IWB Removal will take place before panel installation in these classrooms by the East Butler PS Staff.

## II. SYSTEM DESCRIPTION:

### A. Classrooms

**Functionality Description:** Classrooms will be equipped with interactive technology to support digital learning, student engagement, and instructional flexibility. The system will be utilized by teachers and students for interactive lessons, presentations, and classroom activities.

#### Source Devices:

- Laptop HDMI (x1). Wireless casting included.

#### Displays:

- (7) Clevertouch 75" Pro Series Interactive Flat Panels mounted on Balance Box mounting systems (1 per room, locations to be shared by client)
- (4) Clevertouch 75" Pro Series Interactive Flat Panels mounted on wall (1 per room, locations to be shared by client).
- (2) Owner Furnished Interactive Panels mounted on classroom wall from mobile carts (Dwight, rooms to be determined by client)

#### Audio:

- Integrated speakers in IFP.

#### Conferencing:

- N/A

#### Controls:

- Touchscreen control via IFP interface.

#### Equipment Location:

- IFP locations to be determined by client prior to installation.

**III. EXCLUSIONS:** The following work is not included in our Scope of Work:

- All conduit, high voltage, wiring panels, breakers, relays, boxes, receptacles, etc.
- Concrete saw cutting and/or core drilling.
- Fire wall, ceiling, roof, and floor penetration.
- Necessary gypsum board replacement and/or repair.

- Necessary ceiling tile or T-bar modifications, replacements, and/or repairs.
- All millwork (moldings, trim, cut-outs, etc.).
- Patching and Painting.
- Permits (unless specifically provided for and identified within the contract).

IV. **CONSIDERATIONS:** Unless otherwise noted or negotiated, any removal of existing equipment and trash related to new equipment will be taken to a central location within the building. The final disposal will be the responsibility of the client/owner.

**\*\*Customer approval of this Scope of Work will be confirmed in the Signature section of this proposal.\*\***

**DRAFT**  
**- FOR BUDGETARY PURPOSES ONLY -**  
**PLEASE WAIT FOR A FINAL QUOTE TO ISSUE A PO.**

# MATERIALS & SERVICES

## OTHER ITEMS

Boxlight	1541351	CLEVERTOUCH PRO SERIES 75"	11.00	\$1,950.00	\$21,450.00
Boxlight	OFE	Existing 65" IFP	2.00	\$0.00	\$0.00
BalanceBox	480A12	BalanceBox 400-70 for touchscreen displays 90.4-152lbs	7.00	\$858.97	\$6,012.79
BalanceBox	481A70	BalanceBox 400 Universal Flatscreen / VESA Interface - Up to 800x600mm / Direct to 481A47002	7.00	\$99.00	\$693.00
KCAV	SHIP-HANDLING	Shipping & Handling of all above items	1.00	\$1,395.79	\$1,395.79
KCAV	IE-INST-IFP-BB (1-10)	Installation of IFP and BalanceBox (qty 1-10)	7.00 OPTIONAL	\$667.00	\$4,669.00 NOT INCLUDED
KCAV	IE-INST-IFP-1-10	Installation - IFP - 1-10 Rooms - No Wiring	6.00 OPTIONAL	\$433.00	\$2,598.00 NOT INCLUDED
KCAV	IE-INST-TRAV	Installation - IE Travel Fee	2.00 OPTIONAL	\$69.33	\$138.66 NOT INCLUDED
KCAV	PROJMGMT	Project Management	4.00 OPTIONAL	\$150.00	\$600.00 NOT INCLUDED
<b>OTHER ITEMS TOTAL:</b>					<b>\$29,551.58</b>
<b>OTHER ITEMS OPTIONAL TOTAL:</b>					<b>\$8,005.66</b>
<b>PROPOSAL TOTAL</b>					<b>\$29,551.58</b>
<b>TOTAL OPTIONAL ITEMS</b>					<b>\$8,005.66</b>

## SERVICE COVERAGE

PART NUMBER	MANUFACTURER	PART DESCRIPTION	QTY	UNIT PRICE	TOTAL PRICE
WARRANTY	KCAV	Workmanship Warranty (90 days)	1.00	\$0.00	\$0.00
<b>TOTAL SERVICE COVERAGE</b>					<b>\$0.00</b>

**Subtotal:** \$29,551.58

**Tax:** \$0.00

**TOTAL:** **\$29,551.58**

**Optional Items (tax not included):** \$8,005.66

# GENERAL TERMS AND CONDITIONS

These Terms & Conditions are by and between Kansas City Audio-Visual, Inc. (the "Company") and the undersigned Customer (the "Customer").

- 1. GRANT OF SECURITY INTEREST:** By signing below, Customer acknowledges that this contract serves as a security agreement within the meaning of the Uniform Commercial Code (UCC), and Customer agrees that Company may file such UCC financing statements as are appropriate to perfect Company's security interest in the equipment.
- 2. INSTALLATION:** Customer hereby grants to Company or its agent the right to install the equipment, to the extent such installation is specified above. Customer represents and warrants that all necessary governmental and third-party approvals for installation of the equipment have been obtained, unless otherwise specified. Delays in installation caused by public agencies, manufacturers, suppliers, acts of God, pandemics, strikes or other union bargaining, and all acts not directly attributable to Company, shall not in any way affect the obligations of Customer, and Company's obligations with respect to such installation shall be suspended during the event causing the delay. Company shall not be responsible for damages from any such delay.
- 3. TAXES, FEES, AND PERMITS:** Customer agrees to pay Company all applicable Federal, State, and local taxes, excises, permits, and fees. All dollars in this Agreement are pre-tax, unless otherwise stipulated.
- 4. SHIPPING:** All shipments of equipment are FOB Company's distribution facilities.
- 5. RESPONSIBILITY:** Until balance is paid, Customer agrees to take proper care of the equipment on premises and to be responsible for any damage or loss by fire, theft, casualty, or any other cause whatsoever, and will not permit or suffer same to be removed from the place of its location at address of Customer, without written consent of Company or assigns.
- 6. GENERAL:** This Agreement constitutes the sole and entire understanding between the parties with respect to the subject matter hereof and supersedes all prior conversations, agreements, representations and promises, whether verbal or written. No modification of this Agreement shall be valid, unless made in writing and properly signed by each party. The provisions of this Agreement are severable; if any clause or provision shall be held invalid or unenforceable, in whole or in part, then such invalidity shall attach only to such clause or provision. Customer shall pay all attorneys' fees and other costs and charges incurred by Company in the collection of debt.
- 7. INFRASTRUCTURE:** In the event that Company is installing equipment or systems that require connectivity to the Customer's network including, but not limited to, VOIP connectivity, internet access, wireless network access, firewall traversal, and/or port forwarding, Company may advise Customer as to the network requirements, but any responsibility for infrastructure on the part of Company stops at the installed equipment's network jack or wireless connection and configuration of the network settings on the device sold by Company. Company is not responsible for updating network settings in the event the Customer's network changes. If the Customer's network is not "Plug and Play," then any custom network settings must be supplied by Customer to Company before the start of installation.
- 8. INSTALLATION AND SITE PREPARATION:** Installation (field assembly, interconnection, equipment calibration and checkout) is to be performed by the Company's trained technical employees. The Company shall be entitled to employ subcontractors and/or agents to assist in or carry out, in whole or in part, the installation. In the event installation by Company employees is prevented by trade unions, Customer shall arrange with the trade unions at its own expense to complete installation. The Company is thereafter liable only for supervision of installation.

Company agrees to coordinate with other trades to facilitate satisfactory work progress. If Company's work in progress is impeded by other trades and/or contractors (excluding Company's own subcontractors) or by scheduling delays due to Customer, time delays in the final installation as well as additional charges including labor, travel and reasonable expenses may result.

Customer shall be responsible for preparing, at its own expense, the installation site in accordance with the Company's instructions, including the requirements specified in the proposal. Company shall not be responsible for any high-voltage electrical work, ceiling modifications, structural modifications, or mechanical systems modifications.

Unless otherwise specified, Customer shall provide the Company with source code for any non-Company programmed remote control system required to be modified under the terms of this Agreement.

Customer shall provide the Company with reasonable access to the installation site before delivery, based upon a mutually agreed upon project schedule, for purposes of determining site readiness for installation. Customer will designate an individual on Customer's staff to serve as a contact person for all site preparation and installation issues. Customer shall indemnify the

Company against any loss, damage or claim arising out of the condition of the storage and installation premises.

Customer shall obtain at its expense and keep effective all permissions, licenses, and permits whenever required for the installation and/or use of the equipment and the premises where the equipment shall be situated.

#### 9. LIMITATION OF LIABILITY:

(a) **Cap on Liability:** Except as otherwise provided in this Agreement, the total aggregate liability of either Party, whether in contract, tort (including negligence), or otherwise, shall not exceed the total fees paid by Client during the twelve (12) months immediately preceding the event giving rise to such liability.

(b) **Exclusion of Damages:** Neither Party shall be liable for any consequential, incidental, indirect, exemplary, punitive, or special damages, including loss of profits, revenue, goodwill, or business interruption, even if advised of the possibility of such damages.

(c) **Exceptions:** These limitations shall not apply to indemnification obligations, breaches of confidentiality, gross negligence, willful misconduct, or liability that cannot be limited by law

10. LIMITATIONS OF WARRANTY - PRODUCTS OF OTHERS: Unless otherwise specified, no warranty is provided for "consumables," including batteries, lamps, glassware and evacuated devices.

Company's sole obligation with respect to any material or part identified in the quotation, literature, or specifications furnished to the Customer as manufactured or supplied by others, shall be to pass on to Customer the applicable manufacturer's warranties, if any.

11. CHOICE OF LAW AND SEVERABILITY: This agreement shall be interpreted in accordance with and governed in all respects by the law of Missouri. Venue shall be Kansas City, Missouri. Should any provision of this Agreement be found invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other provision contained herein.

12. PROJECT/ORDER CANCELLATION: Customer must notify Company via both orders@kcav.com and sales representative in writing to cancel a project or order. Upon receipt of the notice, Company will acknowledge in writing Customer's order cancellation and provide the official date of cancellation.

Projects that are cancelled within sixty (60) calendar days of notification for Company to proceed with the work are subject to a 25% restocking charge (plus return shipping to the manufacturer) on all hardware and are subject to payment for professional services provided by Company prior to the date of cancellation (engineering/design services, project management, etc.).

Projects that are cancelled sixty-one (61) or more days after Company has been notified to proceed are subject to full payment for all hardware that has been received by Company and Customer in conjunction with the order. Company will make reasonable effort to obtain exceptions from suppliers for the return of equipment with restocking charges and will notify customer of any such options. Additionally, client is responsible for payment of professional services provided by Company prior to the date of cancellation (engineering/design services, project management, etc.).

Custom items may be noncancellable and are not returnable.

13. RESTOCKING FEES: In the event Customer wishes to return any returnable equipment, Customer agrees to pay restocking fees of 25% of the sale price in addition to any applicable shipping charges.

14. CHANGE ORDERS: Any changes of scope made to the design of the system or the contractual agreements in implementation or functionality will require a mutually agreed upon "Change Order" form signed by an authorized representative for the Customer.

15. TARIFFS: Due to the recent US imposed tariffs on goods and supplies, Company has included a tariff contingency budget in this proposal. Many of our suppliers manufacture their products in these countries, and Company is setting this contingency budget in place to help cover any potential unforeseen increases in hardware and cabling costs. We have been alerted by many of our manufacturing partners that an increase is imminent. To what degree and at what percentage, we are unsure at this time. Company is forecasting ahead, as best as we can, to cover these unknown increases with this contingency budget. Any part of this contingency budget not used towards hardware and cabling cost increases, due to tariffs, will be reduced from the final invoice of the project.

16. PROFESSIONAL DEVELOPMENT SERVICES: Unless specified otherwise, any purchased training or professional development services must be conducted within 12 months of placement of the sales order, unless mutually agreed upon

otherwise in writing. Company will consider any contract to deliver professional development services fulfilled on the date 12 months after placement of sales order.

17. DESIGN SERVICES: All designs are the property of the Company. If Customer contracts with the Company to implement the design, the design shall become the property of Customer. If Customer wants to use the Company's design for an RFP, bid or any other purposes without implementation by the Company, the Company will advise Customer of the fee to purchase the design. Upon payment of the fee, the design becomes the property of Customer.

18. CONFIDENTIALITY: This Agreement and all drawings, specifications, and designs are the property of the Company. Proprietary information provided to Customer (or its agents) is for the sole purpose of demonstrating the Company's capabilities and shall be held in confidence. These materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of the Company. Any effort to do so will be considered a violation of copyright law.

19. PARAGRAPH HEADINGS: The paragraph headings contained herein are for the convenience of reference only and shall not be construed to affect the interpretation or construction of any substantive provision of this Agreement.

**DRAFT**  
**- FOR BUDGETARY PURPOSES ONLY -**  
**PLEASE WAIT FOR A FINAL QUOTE TO ISSUE A PO.**

## KCAV PROJECT WARRANTY

KCAV offers a 90-day warranty on labor and workmanship, beginning on the date of substantial completion of your project. In the event there is a service issue, and it is determined that the issue is due to project workmanship, KCAV will rectify the issue at no cost to the client. KCAV offers a 90-day warranty on any manufacturer's components included in the project and purchased directly from KCAV. KCAV will work with the manufacturer and client to remove, replace, and reinstall the defective equipment at no charge to the client. KCAV supports the manufacturer's warranty on all hardware. Manufacturer warranties range in time and may be as long as five years. Most manufacturer warranties are based upon depot service. As such, the manufacturer warranty does not cover such items as travel and labor to remove defective equipment, or to reinstall replacement equipment. In the event of a service call which turns out to be related to issues outside of warranty (act of God, user-error, etc.), KCAV will submit an invoice for travel, time, and materials related to the service call. KCAV can provide more information regarding handling of hardware-based warranty situations upon request. KCAV is not responsible for warranty or support of existing Owner Furnished Equipment (OFE).

Maintenance and service agreements are available for extended periods of time. If you have interest in learning more, please contact KCAV at ([service@kcav.com](mailto:service@kcav.com)) for more information.

## KCAV SERVICE OPTIONS

KCAV offers three levels of hourly service, in order to address a full range of situations that require timely, high-quality service of our clients' AV system.

### Standard-Level Service

Standard-level service takes place between the hours of 8:00am - 5:00pm, Monday-Friday. Standard-level services requires a minimum of two business days' advance notice for scheduling purposes. While KCAV will make every effort to perform standard service sooner than two days from the client's request, this will not always be possible.

### Priority-Level Service

Priority-level service takes place between the hours of 8:00am - 5:00pm, Monday-Friday. Priority-level service will be performed with less than two business days' advance notice. Priority-level service is designed for time-sensitive service needs which do not allow for two or more business days' advance notice.

### After-Hours Service

After-hours service takes place outside of 8:00am - 5:00pm, Monday-Friday, and also takes place on federal holidays. After-hours service is designed for service needs which cannot be addressed during standard business hours.

Please note the following which apply to all levels of service provided by KCAV:

- Service time is portal-portal. The time is calculated from the time the service technician departs the KCAV office until the time the service technician returns to the KCAV office.
- A two-hour minimum will be charged for all service calls.
- A dispatch fee is added to each service call to account for the costs of operating the service vehicle.

1. **DELAYS:** All orders are subject to the Company's ability to make delivery at the time specified, and the Company shall not be liable for damages for failure to make partial or complete delivery. The Company shall not be liable for delays in delivery caused by forces not reasonably within Company's control (including but not limited to delays or defaults by carriers, extreme cold weather, floods, fires, storms, or other acts of God, war or act of public enemy or civil disturbance, strikes, lock-outs, shortages of labor or raw materials and supplies, action of any governmental authority, or any other force majeure event). Customer shall be liable for any added expenses incurred by the Company because of, including but not limited to, Customer's delay furnishing requested information to the Company; delays resulting from order changes by Customer; delays related to Customer's network configuration or other systems issues; or conditions affecting installation duration, off-hours or continuous workdays of 8 am to 5 pm.

2. **EQUIPMENT AND MATERIALS PRICE INCREASE:** Company shall be entitled to additional compensation from Customer in the event there is a significant increase in price of any specific item of equipment or materials of seven percent (7%) or more between the date the Agreement is signed and the date that equipment and materials are purchased for the work to be performed on the project.

3. **DELIVERY COSTS & CLAIMS:** Customer agrees to pay for all shipping or transportation costs of the equipment as and if stated on Company's proposal and/or the invoice. Company shall not be liable to Customer for any damage to or loss of equipment in transit. Company's only recourse as to such damage or loss shall be with or against carrier, and all claims must be filed with the carrier. Upon delivery, Customer must inspect and verify that contents match the packing list and are without damage. If there are any discrepancies or damages, Customer must notify Company in writing within three (3) business days, or such claims shall be waived.

4. **HARDWARE-ONLY ORDERS:** Orders over \$50,000 consisting of hardware only require a 50% down payment.

5. **INSTALLATION PROJECTS:** In keeping with industry standards, payment terms for projects over \$50,000 that involve installation are as follows:

- 50% down payment in advance of start of project
- 40% invoiced following delivery of hardware
- 10% remaining invoiced upon Substantial Completion of project

6. **PAYMENT & PAST DUE ACCOUNTS:** All payments are due within thirty (30) days of the invoice date unless an advance down payment is required on Company's quote. A finance charge of the lesser of 1.5% per month (18% - APR) or the highest rate permitted by law will be assessed on all past due accounts. Interest charged on a past due invoice will be assessed from the date of the invoice. Customer agrees to reimburse Company for all attorneys' fees and court costs in connection with default of these payment terms by Customer.

7. **CREDIT & CREDIT CARD PURCHASES:** Credit payment terms must have the prior approval of Company. Company reserves the right to stop delivery of equipment or provision of services if Customer's financial condition becomes impaired or unsatisfactory to the Company. Additionally, Company may require payment in advance or other security, and, in the absence thereof, may cancel, without liability, the unfilled portion of an order. Credit card purchases shall be subject to a four percent (4%) convenience fee where allowed.

# PROPOSAL SUMMARY

BILL TO:	SHIP TO:
East Butler Public Schools 212 S Madison St PO Box 36 Brainard, NE 68626	East Butler Elementary School-Dwight 292 N 1st St PO Box 160 Dwight, NE 68635

**Subtotal:** \$29,551.58

**Tax:** \$0.00

**TOTAL:** **\$29,551.58**

**Optional Items (tax not included):** \$8,005.66

This proposal shall become binding on the parties hereto when signed by the Customer and accepted by the Company.

By initialing here, the Customer confirms that they have read, understood and agree to the Company's Terms and Conditions.

By initialing here, the Customer confirms they have read the included Scope of Work and agree that it meets their needs. Should the Customer's needs change, the Company will provide a Contract Change Order to adjust the contract based on changes to the Scope of Work, which could include changes to Equipment, Labor and/or other charges.

CUSTOMER: **East Butler Public Schools**

**Kansas City Audio-Visual, Inc.**

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



# AIA® Document A133® – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the 16th day of December in the year 2025  
*(In words, indicate day, month, and year.)*

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

Butler County School District 12-0502 a/k/a  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

and the Construction Manager:  
*(Name, legal status, address, and other information)*

Boyd Jones Construction Company  
950 S. 10<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68108

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

School Facilities Improvement Project  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

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

Beringer Ciaccio Dennell Mabrey, Inc. (BCDM Architects)  
1015 North 98th Street, Suite 300  
Omaha, Nebraska 68114-2357

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

The physical scope of the Project has yet to be set, but it is anticipated that it will be located at or in the vicinity of the Owner's existing facility located at 212 S. Madison Street, Brainard, NE. Additional details and design will be developed, including without limitation based on input from the Owner, the Architect, and the Construction Manager, prior to execution of Exhibit A (the Guaranteed Maximum Price Amendment).

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Provide total and, if known, a line item breakdown.)*

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
*(Identify any requirements for fast-track scheduling or phased construction.)*

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

None.

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:  
*(List name, address, and other contact information.)*

Michael Eldridge, Superintendent  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626  
(402) 545-2081  
meldridge@ebutler.esu7.org

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
*(List name, address and other contact information.)*

The School Board

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

TBD

.2 Civil Engineer:

TBD

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

TBD

§ 1.1.11 The Architect's representative:  
(List name, address, and other contact information.)

Casey Painter  
Beringer Ciaccio Dennell Mabrey, Inc. (BCDM Architects)  
1015 North 98th Street, Suite 300  
Omaha, Nebraska 68114  
(402) 322-0081  
cpainter@bcdm.net

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

Mitch Broekemeier, Project Manager  
Boyd Jones Construction Company  
950 S. 10<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68108  
(402) 594-4934  
mbroekemeier@boydjones.biz

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

Provided by Construction Manager for review and approval by Owner.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

Competitive bidding.

§ 1.1.15 Other Initial Information on which this Agreement is based:

Init.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager may agree to adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- .1 Modifications issued after execution of the Agreement;
- .2 Addenda or Riders issued prior to or in conjunction with the execution of the Agreement, with the Addenda or Riders bearing the latest date taking precedence;
- .3 This Agreement;
- .4 The supplementary conditions;
- .5 The General Conditions of the Contract for Construction;
- .6 The Drawings and Specifications; and
- .7 The Schedule of Contractor's Qualifications, Clarifications, and Assumptions, if any.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's reasonable skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; to use the Construction Manager's best efforts; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

#### **§ 3.1.3.3 Intentionally deleted**

**§ 3.1.3.4** During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

**§ 3.1.3.5** Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations to the Owner and Architect with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. In the event that costs to redesign the work are incurred after the GMP is set, then the Construction Manager shall be responsive for the costs of such redesign services.

**§ 3.1.6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.9** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

**§ 3.1.10** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### **§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project and furnish to the Owner, the Owner's Representative, and the Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier. The Construction Manager shall not contract with any subcontractor or supplier that the Owner or the Architect has so objected.

**§ 3.1.11.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from foreseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such foreseeable causes or anticipated details include, but are not limited to, refinement of details of design within the scope of standard, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any foreseeable causes or anticipated details which exceed the Construction Manager's Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner

for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a specific line item for Owner's contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: 50% shall be the Construction Manager's Contingency and 50% shall be Owner's Contingency.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 Detailed construction schedule.
- .7 The Date of Final Completion upon which the proposed Guaranteed maximum Price is based, which date shall be acceptable to Owner.
- .8 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the estimated Cost of the Work shall include the Construction Manager's Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 3.2.2, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use, to cover costs, per Section 3.2.2.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 3.2.6** The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date of commencement of the Work is the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended.

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

**§ 3.2.9** The Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager from which the Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Exhibit A to AIA Document A133-2019.

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence on the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended and shall constitute day zero ("0") of the stated Completion Time for Work under the GMP Amendment, Exhibit A.

#### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner, upon written request from the Construction Manager, shall provide to Construction Manager, or shall ask the Architect or other appropriate consultant to provide to Construction Manager, as soon as practically possible, such existing information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment, systems sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 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 Article 7, (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 Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid negligently damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

**§ 4.1.4.1** The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.1.4.3** The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 4.1.5** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

**§ 4.1.6** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### **§ 4.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

#### **§ 4.3 Architect**

The Construction Manager's services shall be provided in conjunction with the services of an Architect, which the Owner has retained. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

### **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

#### **§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

\$10,000.00

Construction Manager acknowledges that none of Owner's resources, including without limitation the compensation for Preconstruction Phase services described above, shall be used in any way whatsoever for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question, including without limitation any bond initiative related to financing of the Project.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

## § 5.2 Payments

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

## § 5.2.2 Payments are due and payable

*(Paragraphs deleted)*

thirty (30) days following the Construction Manager's presentation to the Owner of an Application for Payment that is approved and signed by the Architect, provided that such Architect-approved Application for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Architect-approved Application for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

### § 6.1.2 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

3.15%

Which shall be converted to a lump sum upon Owner's approval of the GMP, provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self-performs for the Project in a lump sum accepted bid; and further provided that no Construction Manager fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work. All charges, if any, for General Conditions (items marked by an "X" in the column entitled "CM Fee and General Conditions" on the General Conditions Matrix, Attachment C) shall be included in the Construction Manager's fee. No additional charges or reimbursement for any costs Construction Manager designates as General Conditions shall be allowed; all such General Conditions shall be included in the Construction Manager's fee.

### § 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Construction Manager's Fee for changes in the Work resulting in a net increase or decrease to the Cost of the Work shall be adjusted in an amount equal to the product of the percentage fee in section 6.1.2 multiplied by such net increase or decrease.

### § 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See the A201 General Conditions of the Contract, as amended.

§ 6.1.5 Rental rates for Construction Manager-owned equipment that are not furnished as part of subcontracted work by Construction Manager shall be in the amounts as are set forth on the rental rate schedule attached as Attachment B – Equipment Rates, which shall be charged to the Owner as set forth in Section 7.5.2.

### § 6.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

See section 11.3 below.

**§ 6.1.7 Other:**

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

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner.

**§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. Adjustments to the Guaranteed Maximum Price on account of Owner-approved changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be calculated in accordance with Article 7 of A201-2017, as amended; provided, however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by the Owner's Representative. Adjustments to the Guaranteed Maximum Price shall only be considered if presented in accordance with the Contract Documents prior to performing additional Work and incurring additional Costs.

*(Paragraphs deleted)*

**ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. However, "Cost of the Work" shall not include costs incurred because of the negligence, breach of contract, or other misconduct of Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of Work, shall be included in the Guaranteed Maximum Price.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

**§ 7.2 Labor Costs**

**§ 7.2.1** Labor in the direct employ of the Contractor; the Contractor's employees when stationed at the field office, in whatever capacity employed; employees engaged on the road expediting the production or transportation of material and equipment; and supervisory employees from the principal or branch office performing the functions as noted herein, but only for that portion of their time required for the Work. All rates are listed on Attachment A.

*(Paragraphs deleted)*

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 9.1, as amended, shall be treated as Work performed by a Subcontractor under Section 7.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted to the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 7 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, aid to construction, clean-up, barricades, utility consumption charges, utility assessments, utility fees, capital facilities fees, power company fees, sewer frontage fees, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

*(Paragraph deleted)*

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

**§ 7.6.1.2** Sales, use, or similar taxes imposed by a governmental authority that are related to the Work only when Owner is not exempt from such taxes and the Construction Manager is liable.

**§ 7.6.2** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.3 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.4 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5 Intentionally deleted.

*(Paragraph deleted)*

§ 7.6.6 Deposits lost directly resulting from the Owner’s actions or decisions.

§ 7.6.7 Intentionally deleted.

*(Paragraphs deleted)*

### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner’s prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

*(Paragraph deleted)*

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### § 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;

- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Delay damages or claims; and
- .11 Storage costs, unless with prior written Owner approval.

#### **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from subcontractors for the performance of all major elements of the Work. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which proposals will be accepted. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

§ 9.1.1 If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

#### **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702-1992 for approval. Continuation sheets shall be submitted on AIA Form G703-1992. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within thirty (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, provided that such Certificate for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Certificate for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified and that Owner approves; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

ten percent (10%), which shall be reduced as allowed by the Nebraska law

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Material and Equipment procured via commitment Purchase Orders

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

If the Work from which retainage is withheld is fifty percent complete and if the Contractor has performed Work in accordance with the provisions of the Contract Documents, no more than five percent (5%) of any additional progress payment may be withheld as retainage *if* the Contractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the Work. Except as provided otherwise herein, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (I) any of the Owner's rights to retainage in connection with other payments to the Contractor of (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

*(Paragraph deleted)*

§ 11.1.9 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.10 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.11 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

- .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

*(Paragraph deleted)*

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, including the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, but excluding the Construction Manager's responsibility to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect, and the Construction Manager has provided all documents required by Sections 3.5.7 and 9.10.2 of AIA Document A201-2017, as amended, and the Owner's Board of Education has voted to accept the Work and approve Final Payment.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article

9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017.

**§ 11.2.2.3** If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request dispute resolution as provided in the Contract Documents of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for dispute resolution shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request dispute resolution as provided in the Contract Documents within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

**§ 11.2.3** The Owner’s final payment to the Construction Manager shall be made no later than 30 days after approval from the Owner’s Board of Education.

*(Paragraph deleted)*

**§ 11.3 Time**

**§ 11.3.1** Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager’s failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are and will continue to be impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion that such sums are liquidated direct damages and shall not be construed as a penalty and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

**§ 11.3.2** It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to Two Thousand Five-Hundred Dollars (\$2,500.00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

**§ 11.3.3** Timely Final Completion is an essential condition of this Agreement, Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of One Thousand Dollars (\$1,000.00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

**§ 11.3.4** Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

**§ 11.4 Interest**

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

twelve percent (12%) per annum

## ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 The Construction Manager and Owner may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the Construction Manager and Owner.

*(Paragraphs deleted)*

### § 12.2

*(Paragraphs deleted)*

Notwithstanding any reference to arbitration contained in this Agreement, neither the Construction Manager nor the Owner shall be obligated to resolved any Claim through arbitration.

*(Paragraph deleted)*

§ 12.3 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to the Architect's estimate of the probable Cost of the Work upon its completion; and

- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

### § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

#### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201-2017.

#### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager compensation at an amount agreed to by the Owner and the Construction Manager, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

#### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Construction Manager a termination fee as follows:

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

Zero Dollars (\$0.00)

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 14.3 Insurance and Bonds

For the Preconstruction Phase and the Construction Phase, the Construction Manager shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™–2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ 14.4 Intentionally deleted

### § 14.5 Governing Law

Section 13.1 of AIA Document A201–2017 applies to both the Preconstruction and Construction Phases.

### § 14.6 Fair Labor Standards

The Construction Manager shall maintain fair labor standards throughout the performance of this Contract. The Construction Manager shall file with the Owner a statement that the Construction Manager is complying with, and will continue to comply with, fair labor standards in the pursuit of its business and in the execution of the Contract. Any additional contract entered into between Construction Manager and Owner shall include a provision that in the execution of the contract, fair labor standards shall be maintained. For purposes of this section, the phrase "fair labor standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Construction Manager.

### § 14.7 Payment of Unemployment Compensation

The Construction Manager shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.

§ 14.8 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

**§ 14.9** The Construction Manager shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009, and who are physically performing services within the State of Nebraska. If the Construction Manager employs or contracts with any Subcontractor in connection with this Agreement, the Construction Manager shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

**§ 14.10 Indemnification**

**§ 14.10.1**

To the extent permitted by applicable law but without waiving any rights under any applicable state governmental immunity act, the parties hereby agrees to indemnify, defend, and hold the other, and any subsidiary, parent, or affiliate corporations of the Owner, or other persons or entities designated by the other, and their respective directors, officers, agents, employees, and designees (collectively, the "Indemnitees") harmless from all losses, claims, liabilities, injuries, damages, and expenses, including attorneys' fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including: but not limited to any one or more of the Indemnitees) arising out of or occurring in connection with the performance or lack of performance by the indemnifying party of its duties and obligations under or pursuant to this Agreement whether or not any other party, contributes to such performance or lack of performance by the indemnifying party. Where both Parties, including their respective employers or agents, participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault.

**§ 14.10.2** The indemnification obligation under this Section 14.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Construction Manager or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 14.11** The Construction Manager and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

**§ 14.12** The Construction Manager and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Construction Manager and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Construction Manager and all Subcontractor, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach. The District may suspend or terminate the Construction Manager, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

**§ 14.13** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be as waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**§ 14.14** The Construction Manager's federal employer identification number is: 47-0482284.

**§ 14.15** The Construction Manager acknowledges that the Owner must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

**§ 14.16** When present on Owner's property, Construction Manager and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall:

- .1 not used.
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;

- .5 not carry a firearm or other weapon; and
- .6 comply with all of the school district's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

§ 14.17 The Construction Manager shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by Owner. Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

§ 15.1 This Agreement, together with all written modifications, amendments and riders signed by both parties, represents the entire agreement between the Owner and the Construction Manager concerning the subject matter herein and supersedes all prior negotiations, representations or agreements, whether written or oral, between the Owner and the Construction Manager. This Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed, as amended
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as amended
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended
- .5 Intentionally deleted

- .6 Other Exhibits:  
(Check all boxes that apply.)

(Paragraphs deleted)

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

- .7 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Attachment A – Labor Rates
- Attachment B – Equipment Rates
- Attachment C – General Conditions and Reimbursable Matrix

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

\_\_\_\_\_  
OWNER (Signature)

  
\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Michael Eldridge Superintendent  
*(Printed name and title)*

Tim Meyer Senior Vice President of Operations  
*(Printed name and title)*

Int.

# **Additions and Deletions Report for AIA® Document A133® – 2019**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:33:45 on 02/16/2026.

## **PAGE 1**

**AGREEMENT** made as of the 16th day of December in the year 2025

...

Butler County School District 12-0502 a/k/a  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

...

Boyd Jones Construction Company  
950 S. 10<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68108

...

School Facilities Improvement Project  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626  
The  
The Architect:

...

Beringer Ciaccio Dennell Mabrey, Inc. (BCDM Architects)  
1015 North 98th Street, Suite 300  
Omaha, Nebraska 68114-2357

## **PAGE 2**

The physical scope of the Project has yet to be set, but it is anticipated that it will be located at or in the vicinity of the Owner's existing facility located at 212 S. Madison Street, Brainard, NE. Additional details and design will be developed, including without limitation based on input from the Owner, the Architect, and the Construction Manager, prior to execution of Exhibit A (the Guaranteed Maximum Price Amendment).

## **PAGE 3**

TBD

...

TBD

...

TBD

...

TBD

...

None.

...

Michael Eldridge, Superintendent  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626  
(402) 545-2081  
meldridge@ebutler.esu7.org  
**PAGE 4**

The School Board

...

TBD

...

TBD

...

TBD

...

Casey Painter  
Beringer Ciaccio Dennell Mabrey, Inc. (BCDM Architects)  
1015 North 98th Street, Suite 300  
Omaha, Nebraska 68114  
(402) 322-0081  
cpainter@bcdm.net

...

Mitch Broekemeier, Project Manager  
Boyd Jones Construction Company  
950 S. 10<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68108  
(402) 594-4934  
mbroekemeier@boydjones.biz

...

Provided by Construction Manager for review and approval by Owner.

...

Competitive bidding.  
**PAGE 5**

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager ~~shall appropriately may agree~~ to adjust the Project schedule, the Construction Manager’s services, and the Construction Manager’s compensation. ~~The Owner shall adjust the Owner’s budget for the Guaranteed Maximum Price and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. ~~If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:~~

- .1 Modifications issued after execution of the Agreement;
- .2 Addenda or Riders issued prior to or in conjunction with the execution of the Agreement, with the Addenda or Riders bearing the latest date taking precedence;
- .3 This Agreement;
- .4 The supplementary conditions;
- .5 The General Conditions of the Contract for Construction;
- .6 The Drawings and Specifications; and
- .7 The Schedule of Contractor’s Qualifications, Clarifications, and Assumptions, if any.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s reasonable skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; to use the Construction Manager’s best efforts; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**PAGE 6**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of

services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

~~§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.~~Intentionally deleted

§ 3.1.3.4 During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

PAGE 7

The Construction Manager, in consultation with the Architect, shall provide recommendations to the Owner and Architect with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. In the event that costs to redesign the work are incurred after the GMP is set, then the Construction Manager shall be responsive for the costs of such redesign services.

...

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and furnish to the Owner, the Owner's Representative, and the Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier. The Construction Manager shall not contract with any subcontractor or supplier that the Owner or the Architect has so objected.

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 ~~To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from foreseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such foreseeable causes or anticipated details include, but are not limited to, refinement of details of design within the scope of standard, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any foreseeable causes or anticipated details which exceed the Construction Manager's Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a specific line item for Owner's contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: 50% shall be the Construction Manager's Contingency and 50% shall be Owner's Contingency.~~

PAGE 9

- .6 Detailed construction schedule.
- .7 The Date of Final Completion upon which the proposed Guaranteed maximum Price is based, which date shall be acceptable to Owner.
- .8 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis.

§ 3.2.4 ~~In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency-estimated Cost of the Work shall include the Construction Manager's Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change~~

Order costs arising under Section 3.2.2, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use, to cover costs, per Section 3.2.2.

...

**§ 3.2.6** The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date of commencement of the Work is the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended.

...

**§ 3.2.9** The Construction Manager shall not include in the Guaranteed Maximum Price ~~all any~~ sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed from which the Owner is exempt.

**§ 3.2.10** The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Exhibit A to AIA Document A133-2019.

PAGE 10

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment on the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended and shall constitute day zero ("0") of the stated Completion Time for Work under the GMP Amendment. Exhibit A.

...

**§ 4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth Owner, upon written request from the Construction Manager, shall provide to Construction Manager, or shall ask the Architect or other appropriate consultant to provide to Construction Manager, as soon as practically possible, such existing information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements expandability requirements, special equipment, systems sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

PAGE 11

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid negligently damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

...

~~§ 4.1.4.3~~ The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

...

~~§ 4.2.1 Legal Requirements.~~ 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.

~~The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed Construction Manager's services shall be provided in conjunction with the services of an Architect, which the Owner has retained. The terms of the agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement. Architect shall be available for inspection by the Construction Manager upon request.~~

...

\$10,000.00

Construction Manager acknowledges that none of Owner's resources, including without limitation the compensation for Preconstruction Phase services described above, shall be used in any way whatsoever for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question, including without limitation any bond initiative related to financing of the Project.

~~§ 5.1.2~~ The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**Individual or Position**

**Rate**

~~§ 5.1.2.1~~ Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

~~§ 5.1.3~~ If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

PAGE 12

~~§ 5.2.2~~ Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) 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 Construction Manager.  
*(Insert rate of monthly or annual interest agreed upon.)*

~~—%~~ thirty (30) days following the Construction Manager's presentation to the Owner of an Application for Payment that is approved and signed by the Architect, provided that such Architect-approved Application for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Architect-approved Application for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

...

3.15%

Which shall be converted to a lump sum upon Owner's approval of the GMP, provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self-performs for the Project in a lump sum accepted bid; and further provided that no Construction Manager fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work. All charges, if any, for General Conditions (items marked by an "X" in the column entitled "CM Fee and General Conditions" on the General Conditions Matrix, Attachment C) shall be included in the Construction Manager's fee. No additional charges or reimbursement for any costs Construction Manager designates as General Conditions shall be allowed; all such General Conditions shall be included in the Construction Manager's fee.

...

Construction Manager's Fee for changes in the Work resulting in a net increase or decrease to the Cost of the Work shall be adjusted in an amount equal to the product of the percentage fee in section 6.1.2 multiplied by such net increase or decrease.

...

See the A201 General Conditions of the Contract, as amended.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~—~~ percent ( ~~—~~ %) of the standard rental rate paid at the place of the Project, that are not furnished as part of subcontracted work by Construction Manager shall be in the amounts as are set forth on the rental rate schedule attached as Attachment B – Equipment Rates, which shall be charged to the Owner as set forth in Section 7.5.2.

PAGE 13

See section 11.3 below.

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner.

...

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. Adjustments to the Guaranteed Maximum Price on account of Owner-approved changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be calculated in accordance with Article 7 of A201-2017, as amended; provided,

however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by the Owner's Representative. Adjustments to the Guaranteed Maximum Price shall only be considered if presented in accordance with the Contract Documents prior to performing additional Work and incurring additional Costs.

~~§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

~~§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.~~

~~§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

...

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. However, "Cost of the Work" shall not include costs incurred because of the negligence, breach of contract, or other misconduct of Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of Work, shall be included in the Guaranteed Maximum Price.

...

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

...

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Labor in the direct employ of the Contractor; the Contractor's employees when stationed at the field office, in whatever capacity employed; employees engaged on the road expediting the production or transportation of material and equipment; and supervisory employees from the principal or branch office performing the functions as noted herein, but only for that portion of their time required for the Work. All rates are listed on Attachment A.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

~~§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

~~§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 9.1, as amended, shall be treated as Work performed by a Subcontractor under Section 7.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted to the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 7 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager.

PAGE 14

~~§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, aid to construction, clean-up, barricades, utility consumption charges, utility assessments, utility fees, capital facilities fees, power company fees, sewer frontage fees, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.~~

...

~~§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies, materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

~~§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

...

~~§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.~~

~~§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval. Sales, use, or similar taxes imposed by a governmental authority that are related to the Work only when Owner is not exempt from such taxes and the Construction Manager is liable.~~

~~§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is liable required by the Contract Documents to pay.~~

~~§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under~~

Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

~~§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3. Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

~~§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents. Intentionally deleted.~~

~~§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~

~~§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval. Deposits lost directly resulting from the Owner's actions or decisions.~~

~~§ 7.6.7 Costs of document reproductions and delivery charges. Intentionally deleted.~~

~~§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

~~§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

## PAGE 15

~~§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others.

## PAGE 16

.6 Except as provided in Section 7.7.3 of this Agreement, ~~costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

...

.9 Costs for services incurred during the Preconstruction ~~Phase~~ Phase;

.10 Delay damages or claims; and

.11 Storage costs, unless with prior written Owner approval.

...

~~§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.~~ Owner.

...

~~§ 9.1 These portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from subcontractors for the performance of all major elements of the Work. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which proposals will be accepted. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.~~

~~§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the~~

Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

...

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ five (5) years after final payment, or for such longer period as may be required by law.

PAGE 17

~~§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~ The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702-1992 for approval. Continuation sheets shall be submitted on AIA Form G703-1992. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within thirty (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, provided that such Certificate for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Certificate for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

...

~~§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values-values, less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.~~

PAGE 18

- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably ~~justified;~~ justified and that Owner approves; and

...

ten percent (10%), which shall be reduced as allowed by the Nebraska law

...

Material and Equipment procured via commitment Purchase Orders

...

If the Work from which retainage is withheld is fifty percent complete and if the Contractor has performed Work in accordance with the provisions of the Contract Documents, no more than five percent (5%) of any additional progress payment may be withheld as retainage if the Contractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the Work. Except as provided otherwise herein, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (I) any of the Owner's rights to retainage in connection with other payments to the Contractor of (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

PAGE 19

~~§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.~~

§ 11.1.9 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

- .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

...

- .1 the Construction Manager has fully performed the Contract, ~~except for including~~ the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and but excluding the Construction Manager's responsibility to satisfy other requirements, if any, which extend beyond final payment;

...

- .3 a final Certificate for Payment has been issued by the ~~Architect in accordance with Section 11.2.2.2~~ Architect, and the Construction Manager has provided all documents required by Sections 3.5.7 and 9.10.2 of AIA Document A201-2017, as amended, and the Owner's Board of Education has voted to accept the Work and approve Final Payment.

...

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. ~~The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request ~~mediation-dispute resolution as provided in the Contract Documents~~ of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for ~~mediation-dispute resolution~~ shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request ~~mediation-dispute resolution as provided in the Contract Documents~~ within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after ~~the issuance of the Architect's final Certificate for Payment, or as follows:~~

approval from the Owner's Board of Education.

~~§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

### § 11.3 Interest Time

§ 11.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are and will continue to be impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion that such sums are liquidated direct damages and shall not be construed as a penalty and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the

agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

§ 11.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to Two Thousand Five-Hundred Dollars (\$2,500.00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 11.3.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of One Thousand Dollars (\$1,000.00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 11.3.4 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

#### § 11.4 Interest

PAGE 21

%—twelve percent (12%) per annum

...

§ 12.1 Initial Decision Maker~~The Construction Manager and Owner may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the Construction Manager and Owner.~~

~~§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

~~§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.  
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

**§ 12.2 Binding-Dispute-Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

~~Arbitration pursuant to Article 15 of AIA Document A201-2017~~ Notwithstanding any reference to arbitration contained in this Agreement, neither the Construction Manager nor the Owner shall be obligated to resolve any Claim through arbitration.

~~Litigation in a court of competent jurisdiction~~

~~Other: (Specify)~~ § 12.3 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

~~If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.~~

...

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to ~~a reasonable~~ the Architect's estimate of the probable Cost of the Work upon its completion; and

PAGE 22

**§ 13.2.2.2** ~~The Owner shall also pay the Construction Manager fair compensation, compensation at an amount agreed to by the Owner and the Construction Manager,~~ either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

...

Zero Dollars (\$0.00)

PAGE 23

For the Preconstruction Phase and the Construction Phase, the Construction Manager shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™-2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 14.3.1 Preconstruction Phase**

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

**§ 14.3.1.1 Commercial General Liability with policy limits of not less than ~~(\$ )~~ for each occurrence and ~~(\$ )~~ in the aggregate for bodily injury and property damage.**

~~§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$ ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~

~~§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ 14.3.1.6 Other Insurance~~

~~(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)~~

**Coverage**

**Limits**

~~§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

~~§ 14.3.2 Construction Phase~~

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™ 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™ 2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:  
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)Intentionally deleted~~

...

~~§ 14.5 Other provisions: Governing Law~~

~~Section 13.1 of AIA Document A201–2017 applies to both the Preconstruction and Construction Phases.~~

~~§ 14.6 Fair Labor Standards~~

~~The Construction Manager shall maintain fair labor standards throughout the performance of this Contract. The Construction Manager shall file with the Owner a statement that the Construction Manager is complying with, and will continue to comply with, fair labor standards in the pursuit of its business and in the execution of the Contract. Any~~

additional contract entered into between Construction Manager and Owner shall include a provision that in the execution of the contract, fair labor standards shall be maintained. For purposes of this section, the phrase "fair labor standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Construction Manager.

#### **§ 14.7 Payment of Unemployment Compensation**

The Construction Manager shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.

§ 14.8 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

§ 14.9 The Construction Manager shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009, and who are physically performing services within the State of Nebraska. If the Construction Manager employs or contracts with any Subcontractor in connection with this Agreement, the Construction Manager shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

#### **§ 14.10 Indemnification**

##### **§ 14.10.1**

To the extent permitted by applicable law but without waiving any rights under any applicable state governmental immunity act, the parties hereby agree to indemnify, defend, and hold the other, and any subsidiary, parent, or affiliate corporations of the Owner, or other persons or entities designated by the other, and their respective directors, officers, agents, employees, and designees (collectively, the "Indemnitees") harmless from all losses, claims, liabilities, injuries, damages, and expenses, including attorneys' fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including: but not limited to any one or more of the Indemnitees) arising out of or occurring in connection with the performance or lack of performance by the indemnifying party of its duties and obligations under or pursuant to this Agreement whether or not any other party contributes to such performance or lack of performance by the indemnifying party. Where both Parties, including their respective employers or agents, participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault.

§ 14.10.2 The indemnification obligation under this Section 14.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Construction Manager or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 14.11 The Construction Manager and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

§ 14.12 The Construction Manager and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Construction Manager and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Construction Manager and all Subcontractor, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach. The District may suspend or terminate the Construction Manager, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

§ 14.13 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall

impair any such right or power or be construed to be as waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.14 The Construction Manager's federal employer identification number is: 47-0482284.

§ 14.15 The Construction Manager acknowledges that the Owner must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

§ 14.16 When present on Owner's property, Construction Manager and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall:

- .1 not used.
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the school district's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

§ 14.17 The Construction Manager shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by Owner. Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

PAGE 25

§ 15.1 This Agreement represents the entire and integrated Agreement, together with all written modifications, amendments and riders signed by both parties, represents the entire agreement between the Owner and the Construction Manager concerning the subject matter herein and supersedes all prior negotiations, representations or agreements, either written or oral, whether written or oral, between the Owner and the Construction Manager. This Agreement may be amended only by written instrument signed by both Owner and the Owner and the Construction Manager.

...

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if ~~executed~~ executed, as amended
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as amended
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended
- .5 ~~Building Information Modeling Exhibit, if completed:~~ Intentionally deleted

...

*(Check all boxes that apply.)*

AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

...

Attachment A – Labor Rates  
Attachment B – Equipment Rates

Attachment C – General Conditions and Reimbursable Matrix

PAGE 26

Michael Eldridge Superintendent

Tim Meyer Senior Vice President of Operations

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:33:45 on 02/16/2026 under Order No. 20250115061 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

# AIA® Document A133® – 2019 Exhibit A

## Guaranteed Maximum Price Amendment

This Amendment dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 16th \_\_\_\_\_ day of \_\_\_\_\_ December \_\_\_\_\_ in the year 2025 (the “Agreement”)  
(In words, indicate day, month, and year.)

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

School Facilities Improvement Project  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

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

Butler County School District 12-0502 a/k/a  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

Boyd Jones Construction Company  
950 S. 10<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68108

### TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$ \_\_\_\_\_), subject to additions and deductions by Change Order as provided in the

**ADDITIONS AND DELETIONS:**  
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Contract Documents.

**§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

*(Provide itemized statement below or reference an attachment.)*

**§ A.1.1.3** The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

**§ A.1.1.4** The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

**§ A.1.1.5 Alternates**

**§ A.1.1.5.1** Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

**§ A.1.1.5.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

**§ A.1.1.6** Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

## ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ A.2.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of execution of this Amendment.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

**§ A.2.2** Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

**§ A.2.3 Substantial Completion**

**§ A.2.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ A.3.1.2 The following Specifications:  
*(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)*

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

§ A.3.1.3 The following Drawings:  
*(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)*

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:  
*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

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

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:  
*(Identify each allowance.)*

Item	Price
------	-------

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

**ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:  
(List name, discipline, address, and other information.)

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

\_\_\_\_\_  
**OWNER** (Signature)

**BY: Michael Eldridge, Superintendent**

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**CONSTRUCTION MANAGER** (Signature)

**BY: Tim Meyer - Senior VP of Operations**

\_\_\_\_\_  
(Printed name and title)

# **Additions and Deletions Report for AIA® Document A133® – 2019 Exhibit A**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:13:55 CST on 12/17/2025.

## **Changes to original AIA text**

### **PAGE 1**

#### **School Facilities Improvement Project**

**212 S. Madison Street**

**Brainard, NE 68626**

**Butler County School District 12-0502 a/k/a**

**East Butler Public Schools**

**212 S. Madison Street**

**Brainard, NE 68626**

**Boyd Jones Construction Company**

**950 S. 10<sup>th</sup> Street, Suite 100**

**Omaha, Nebraska 68108**

## **Variable Information**

### **PAGE 1**

This Amendment dated the        day of        in the year       , is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 16<sup>th</sup> day of

December in the year 2025 (the "Agreement")

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:13:55 CST on 12/17/2025 under Order No. 20250115061 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2019 Exhibit A, Guaranteed Maximum Price Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*





# AIA Document A133® – 2019 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 16th day of December in the year 2025

*(In words, indicate day, month and year.)*

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

School Facilities Improvement Project  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

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

Butler County School District 12-0502 a/k/a  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*

Boyd Jones Construction Company  
950 S. 10<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68108

### TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

#### ARTICLE B.1 GENERAL

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

#### ARTICLE B.2 OWNER'S INSURANCE

##### § B.2.1 General

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

**ADDITIONS AND DELETIONS:**  
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 to or deleted from the original AIA text.

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

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

## **§ B.2.2 Liability Insurance**

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

## **§ B.2.3 Required Property Insurance**

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

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, theft, vandalism, malicious mischief, or windstorm.

**§ B.2.3.1.2** [Intentionally deleted]

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

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

## **ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

### **§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner that evidence compliance with the requirements in this Article B.3 at the following times: (1) within thirty (30) days of execution of the Agreement; (2) prior to commencement of the Work; (3) upon renewal or replacement of each required policy of insurance; and (4) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability, Automobile Liability, and excess or umbrella liability policy or policies. The Owner's acceptance of the Construction Manager's certificates of insurance does not relieve any of the Construction Manager's responsibilities under the Agreement and shall not constitute a waiver of the Construction Manager's obligations to provide insurance as required by the Agreement and this Exhibit. The Owner has the right to receive copies of any of the Construction Manager's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Construction Manager, and such large deductible or self-insured retention is subject to the Owner's written approval. The Owner has the right to require a proper form of collateral for any such large deductible or self-insured retention.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General liability and Automobile Liability, including without limitation the insurance required by Sections B.3.2.2, B.3.2.3, and B.3.2.6, to include the Owner for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply

to both ongoing and completed operations. The Owner shall continue as an additional insured, upon the terms herein, for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct.

To be clear, the Construction Manager shall NOT include the Owner as an additional insured on the Professional Liability insurance coverage required by Section B.3.2.8, if applicable, or the Pollution Liability Coverage required by Section B.3.2.9, if applicable, to the extent that such policy(ies) include an so-called "insured-versus-insured" exclusion.

#### **§ B.3.1.4 Notice of Cancellation or Non-Renewal**

The Construction Manager (or its insurance carrier(s)) must provide written notice to the Owner no less than thirty (30) days prior to any cancellation or non-renewal of the Construction Manager's insurance. Within three (3) business days of the date the Construction Manager becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section B.3, the Construction Manager shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Construction Manager, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right (but not the obligation) to suspend the services until the lapse in coverage has been cured by the procurement of replacement coverage by the Construction Manager. The furnishing of notice by the Construction Manager shall not relieve the Construction Manager of any contractual obligation to provide any required coverage.

**§ B.3.1.5** Among other grounds to withhold payment, the Construction Manager's failure to fully comply with all insurance requirements in this Section B.3 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Construction Manager. The Owner has the right, but not necessarily the obligation, to declare the Construction Manager's failure to fully comply with the insurance requirements in this Section B.3 a material breach of the Construction Manager's obligations under this Agreement.

**§ B.3.1.6** All of the coverage limits stated in this Section B.3 are minimum insurance limits and shall not be construed in any way to limit the liability of the Construction Manager.

**§ B.3.1.7** The Construction Manager's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

#### **§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- IX . The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

#### **§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage no less broad than the ISO CG 00 01 coverage form for claims including, without limitation,

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

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

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

**§ B.3.2.2.3** The Construction Manager's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

**§ B.3.2.2.4** Any aggregate limit under the Construction Manager's General Liability insurance shall, by endorsement, apply to this Project separately.

**§ B.3.2.3** Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. On behalf of itself and its automobile liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

**§ B.3.2.4** Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

**§ B.3.2.5** Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. On behalf of itself and its employers' liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

**§ B.3.2.6** Commercial Umbrella/Excess Liability Insurance with limits of at least Nine Million Dollars (\$9,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Ten Million Dollars (\$10,000,000) per occurrence. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections B.3.2.2.1, B.3.2.3, and B.3.2.5 and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. On behalf of itself and its commercial umbrella/excess liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. The coverage required in this section shall be maintained for at least ten (10) years following termination of the Agreement or the date of Substantial Completion, whichever is later.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Three Million Dollars (\$3,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

### § B.3.3 Subcontractor's Insurance Coverage

The Construction Manager agrees to require Subcontractors to comply with the insurance provisions required of the Construction Manager pursuant to this Agreement unless the Construction Manager and Owner mutually agree in writing to modify these requirements for Subcontractors whose work is of relatively small scope, provided however that each Subcontractor's Commercial Umbrella/Excess Liability Insurance limits shall be at least Four Million Dollars (\$4,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Five Million Dollars (\$5,000,000) per occurrence.

The Construction Manager agrees that it will contractually obligate its Subcontractors to advise the Construction Manager promptly of any changes or lapses of the requisite insurance coverages and the Construction Manager agrees to promptly advise Owner of any such notices that the Construction Manager receives from its Subcontractors. The Construction Manager agrees that it will contractually obligate its Subcontractors to indemnify and hold harmless Owner to the same extent that Construction Manager is required to do so as provided in this Agreement. The Construction Manager assumes all responsibility for monitoring Subcontractor contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

### § B.3.4 Performance Bond and Payment Bond

§ B.3.4.1 To secure the faithful performance of the work, the Construction Manager will provide a performance bond with a penal sum no less than 100% of the GMP through a corporate surety company. The terms of the performance bond shall be substantially identical to those in the attached AIA A312-2010 Performance Bond as amended by the Owner.

§ B.3.4.2 To secure all of the Construction Manager's payment obligations that arise on the project, the Construction Manager will provide a payment bond with a penal sum no less than 100% of the GMP through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the performance of the Contract. The terms of the payment bond shall be substantially identical to those in the attached AIA A312-2010 Payment Bond as amended by the Owner and in compliance with NEB. REV. STAT. §§ 52-118 to 118.02.

§ B.3.4.3 The corporate surety or sureties issuing the required performance bond and payment bond must be lawfully authorized to issue insurance in the jurisdiction where the Project is located and must have an A.M. Best rating of not less than A- IX.

§ B.3.4.4 The cost of the performance bond and payment bond shall be included in the Cost of the Work.

§ B.3.4.5 The Construction Manager shall deliver the required bonds to the Owner within one week of the Construction Manager's execution of the Agreement and the GMP, whichever is later.

§ B.3.4.6 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

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

# **Additions and Deletions Report for AIA® Document A133® – 2019 Exhibit B**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:15:00 CST on 12/17/2025.

## **Changes to original AIA text**

### **PAGE 1**

#### **School Facilities Improvement Project**

**212 S. Madison Street**

**Brainard, NE 68626**

**Butler County School District 12-0502 a/k/a**

**East Butler Public Schools**

**212 S. Madison Street**

**Brainard, NE 68626**

**Boyd Jones Construction Company**

**950 S. 10<sup>th</sup> Street, Suite 100**

**Omaha, Nebraska 68108**

### **PAGE 2**

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

Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

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

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

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

**§ B.2.3.1.2** [Intentionally deleted]

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

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

PAGE 3

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

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

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

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

- § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- § B.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- § B.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- § B.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- § B.2.4.5 Civil Authority Insurance,** for losses or costs arising from an order of a civil authority.

prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

~~§ B.2.4.6 Ingress/Egress Insurance~~, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

~~§ B.2.4.7 Soft Costs Insurance~~, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### ~~§ B.2.5 Other Optional Insurance.~~

The Owner shall purchase and maintain the insurance selected below.

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

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

~~§ B.2.5.2 Other Insurance~~

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

### ~~ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS~~

#### ~~§ B.3.1 General~~

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

### ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

#### § B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner that evidence compliance with the requirements in this Article B.3 at the following times: (1) within thirty (30) days of execution of the Agreement; (2) prior to commencement of the Work; (3) upon renewal or replacement of each required policy of insurance; and (4) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability, Automobile Liability, and excess or umbrella liability policy or policies. The Owner's acceptance of the Construction Manager's certificates of insurance does not relieve any of the Construction Manager's responsibilities under the Agreement and shall not constitute a waiver of the Construction Manager's obligations to provide insurance as required by the Agreement and this Exhibit. The Owner has the right to receive copies of any of the Construction Manager's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Construction Manager, and such large deductible or self-insured retention is subject to the Owner's written approval. The Owner has the right to require a proper form of collateral for any such large deductible or self-insured retention.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General liability and Automobile Liability, including without limitation the insurance required by Sections B.3.2.2, B.3.2.3, and B.3.2.6, to include the Owner for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The Owner shall continue as an additional insured, upon the terms herein, for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct.

To be clear, the Construction Manager shall NOT include the Owner as an additional insured on the Professional Liability insurance coverage required by Section B.3.2.8, if applicable, or the Pollution Liability Coverage required by Section B.3.2.9, if applicable, to the extent that such policy(ies) include an so-called "insured-versus-insured" exclusion.

**§ B.3.1.4 Notice of Cancellation or Non-Renewal**

The Construction Manager (or its insurance carrier(s)) must provide written notice to the Owner no less than thirty (30) days prior to any cancellation or non-renewal of the Construction Manager's insurance. Within three (3) business days of the date the Construction Manager becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section B.3, the Construction Manager shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Construction Manager, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right (but not the obligation) to suspend the services until the lapse in coverage has been cured by the procurement of replacement coverage by the Construction Manager. The furnishing of notice by the Construction Manager shall not relieve the Construction Manager of any contractual obligation to provide any required coverage.

~~§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law~~<sup>5</sup> Among other grounds to withhold payment, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. Manager's failure to fully comply with all insurance requirements in this Section B.3 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Construction Manager. The Owner has the right, but not necessarily the obligation, to declare the Construction Manager's failure to fully comply with the insurance requirements in this Section B.3 a material breach of the Construction Manager's obligations under this Agreement.

**§ B.3.1.6 All of the coverage limits stated in this Section B.3 are minimum insurance limits and shall not be construed in any way to limit the liability of the Construction Manager.**

**§ B.3.1.7 The Construction Manager's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.**

**§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- IX. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:**

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$ One Million Dollars (\$1,000,000))~~ each occurrence, ~~(\$ Two Million Dollars (\$2,000,000))~~ general aggregate, and ~~(\$ Two Million Dollars (\$2,000,000))~~ aggregate for products-completed operations hazard, providing coverage no less broad than the ISO CG 00 01 coverage form for claims including, without limitation.

§ B.3.2.2.3 The Construction Manager's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.2.4 Any aggregate limit under the Construction Manager's General Liability insurance shall, by endorsement, apply to this Project separately.

§ B.3.2.3 Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than ~~(\$ ) per accident, One Million Dollars (\$1,000,000)~~ combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. On behalf of itself and its automobile liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 The Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Construction Manager ~~may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3,~~ waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.5 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. On behalf of itself and its employers' liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.6 Commercial Umbrella/Excess Liability Insurance with limits of at least Nine Million Dollars (\$9,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Ten Million Dollars (\$10,000,000) per occurrence. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections B.3.2.2.1, B.3.2.3, and B.3.2.5 and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

~~§ B.3.2.5 Workers' Compensation at statutory limits.~~

~~§ B.3.2.6 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~

On behalf of itself and its commercial umbrella/excess liability insurer, the Construction Manager waives

subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

**§ B.3.2.8** If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~(\$ Two Million Dollars (\$2,000,000))~~ per claim and ~~(\$ ) in the aggregate~~ Two Million Dollars (\$2,000,000) in the aggregate. The coverage required in this section shall be maintained for at least ten (10) years following termination of the Agreement or the date of Substantial Completion, whichever is later.

**§ B.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than ~~(\$ Two Million Dollars (\$2,000,000))~~ per claim and ~~(\$ Two Million Dollars (\$2,000,000))~~ in the aggregate.

**§ B.3.2.10** Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~(\$ Three Million Dollars (\$3,000,000))~~ per claim and ~~(\$ Three Million Dollars (\$3,000,000))~~ in the aggregate.

### **~~§ B.3.3 Construction Manager's Other Subcontractor's Insurance Coverage~~**

**~~§ B.3.3.1~~** Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

**~~§ B.3.3.2~~** The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- ~~§ B.3.3.2.1~~** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

PAGE 7

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- ~~§ B.3.3.2.2~~** Railroad Protective Liability Insurance, with policy limits of not less than ~~(\$ )~~ per claim and ~~(\$ )~~ in the aggregate, for Work within fifty (50) feet of railroad property.

- ~~§ B.3.3.2.3~~** Asbestos Abatement Liability Insurance, with policy limits of not less than ~~(\$ )~~ per claim and ~~(\$ )~~ in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- ~~[ ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all risks" completed value form.~~
- ~~[ ] § B.3.3.2.5 Property insurance on an "all risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.~~
- ~~[ ] § B.3.3.2.6 Other Insurance  
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)~~

**~~§ B.3.4 Performance Bond and Payment Bond~~**

~~The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
(Specify type and penal sum of bonds.)~~

The Construction Manager agrees to require Subcontractors to comply with the insurance provisions required of the Construction Manager pursuant to this Agreement unless the Construction Manager and Owner mutually agree in writing to modify these requirements for Subcontractors whose work is of relatively small scope, provided however that each Subcontractor's Commercial Umbrella/Excess Liability Insurance limits shall be at least Four Million Dollars (\$4,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Five Million Dollars (\$5,000,000) per occurrence.

The Construction Manager agrees that it will contractually obligate its Subcontractors to advise the Construction Manager promptly of any changes or lapses of the requisite insurance coverages and the Construction Manager agrees to promptly advise Owner of any such notices that the Construction Manager receives from its Subcontractors. The Construction Manager agrees that it will contractually obligate its Subcontractors to indemnify and hold harmless Owner to the same extent that Construction Manager is required to do so as provided in this Agreement. The Construction Manager assumes all responsibility for monitoring Subcontractor contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

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

§ B.3.4.1 To secure the faithful performance of the work, the Construction Manager will provide a performance bond with a penal sum no less than 100% of the GMP through a corporate surety company. The terms of the performance bond shall be substantially identical to those in the attached AIA A312-2010 Performance Bond as amended by the Owner.

§ B.3.4.2 To secure all of the Construction Manager's payment obligations that arise on the project, the Construction Manager will provide a payment bond with a penal sum no less than 100% of the GMP through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the performance of the Contract. The terms of the payment bond shall be substantially identical to those in the attached AIA A312-2010 Payment Bond as amended by the Owner and in compliance with NEB. REV. STAT. §§ 52-118 to 118.02.

§ B.3.4.3 The corporate surety or sureties issuing the required performance bond and payment bond must be lawfully authorized to issue insurance in the jurisdiction where the Project is located and must have an A.M. Best rating of not less than A- IX.

PAGE 8

§ B.3.4.4 The cost of the performance bond and payment bond shall be included in the Cost of the Work.

§ B.3.4.5 The Construction Manager shall deliver the required bonds to the Owner within one week of the Construction Manager's execution of the Agreement and the GMP, whichever is later.

§ B.3.4.6 The Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**Variable Information**

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 16th day of December in the year 2025



**Attachment A - Wage & Insurance Rates**

As of 4/1/2025

Trade	Normal Wage Rate/HR	Overtime Wage Rate/HR
Skilled Laborer	70.00	96.00
Rough Carpenter	84.00	113.00
Carpenter - Finish	88.00	118.00
Welder	88.00	118.00
Foreman	99.00	128.00
Equipment Operator	102.00	124.00
Superintendent	130.00	
General Superintendent	160.00	
Project Engineer	102.00	
Project Manager	176.00	
Senior Project Manager	184.00	
Project Executive	206.00	
Estimator	160.00	
Preconstruction Manager	182.00	
VDC Coordinator	98.00	
VDC Manager	176.00	
Cost Accountant	118.00	
Contract Administrator	88.00	
Safety Manager	132.00	
Safety Director	168.00	
Equipment Manager	137.00	
Quality Manager	137.00	
Small Tools	5% of Labor Cost	
Payment & Performance Bonds	1% (projects under \$5 mil.), 0.85% (projects over \$5 mil.)	
Liability Insurance	0.85% of Total Costs (billed at start)	

*(Annual adjustment for inflation rounded to the nearest dollar for all rates beginning April 1 each year. Inflation will be adjusted by 12-month All Items CPI (CPI-U) as measured at 12/31 of the prior year by the Bureau of Labor Statistics). Burden is included in the rates. Per Diem is not included in the rates and will be added. This rate sheet is not all-inclusive and additional classifications will be available upon request or as required on the project.*

**CONFIDENTIAL**



## Equipment Rates - Attachment B



As of April 1, 2025

Description	Hourly Rate	Daily Rate	Weekly Rate
Air Compressor- Portable		79.00	315.00
Air Compressor- Tow		315.00	945.00
Air Monitor		262.00	
Backhoe		630.00	1,890.00
Blower		105.00	315.00
Breaker Electric		210.00	630.00
Chipping Hammer		52.00	158.00
Compaction Wheel			315.00
Compactor - Jump/Plate		191.00	481.00
Compactor - Roller		225.00	660.00
Computer			53.00
Concrete Bucket		210.00	630.00
Concrete Jersey Barriers			210.00
Concrete Vibrators		131.00	393.00
Copier/Printer - small			28.00
Core Drills w/ bits		105.00	378.00
Cutting Torch Set		79.00	236.00
Delivery Trailer	30.00		
Delivery Truck	40.00		
Demo Saw Concrete		131.00	445.00
Drone		300.00	
Dump Box		105.00	315.00
Dump Truck		630.00	1,890.00
Fans - 36"		52.00	157.00
Forklift-JLG Skytrac 10K		840.00	2,520.00
Forklift-Lull 844		630.00	1,575.00
Fuel Containers			158.00
Generator - 150 kW			2,730.00
Generator - 35 kW		340.00	1,024.00
Generator - 5000 W		125.00	325.00
Grout Mixer		84.00	309.00
Heater - 0-149K BTU		79.00	305.00
Heater - 150K-399K BTU		158.00	630.00
Heater - 400K-750K		299.00	732.00
Insulated Blankets		11.00	42.00
Jackhammer		105.00	315.00
Laser Level		105.00	420.00
Laser Scanner		2,940.00	
Mag Drill		63.00	189.00
Manbasket-lull		147.00	472.00
Material Hoist/Winch		157.00	472.00
Mini Excavator		420.00	1,575.00
Miter Saw		52.00	210.00
Negative Air Machine		262.00	525.00
Office - 20' Conex			288.00
Office - 40' Conex			315.00
Office Trailer 10x40			399.00
Office Trailer 12x60			525.00
Office Trailer 8x30			299.00
Pallet Jack		42.00	126.00
Pavement Breaker		315.00	1,260.00
Picking Eye		63.00	189.00
Pickup		266.00	580.00
Pile Driver			6,200.00
Plasma Cutter		158.00	473.00
Power Buggy		158.00	473.00

Power Station- step down		105.00	367.00
Power Trowel		121.00	315.00
Pressure Washer		105.00	341.00
Project Management Software			675.00
Radios			79.00
Rotary Hammer		89.00	368.00
Safety - AED			80.00
Safety - Anchor Points			11.00
Safety - Butterflies			8.00
Safety - Eye Wash Station			6.00
Safety - Fire Extinguishers			11.00
Safety - First Aid Kit			9.00
Safety - Guardrail		21.00	
Safety - Harnesses			20.00
Safety - Lanyards			6.00
Safety - Retractable		40.00	120.00
Safety Cart		122.00	383.00
Safety Cone Barriers			9.00
Safety Rails		21.00	
Scaffolding - Motorized			288.00
Skid Auger		131.00	341.00
Skidsteer		472.00	1,400.00
Skidsteer Snowplow Attachment		105.00	315.00
Storage - Job/Gang Box			53.00
Storage - Conex Box Container 20 ft.			74.00
Storage - Conex Box Container 40 ft.			105.00
Storage - Job Trailer			105.00
Street Sweeper Box		236.00	525.00
Table Saw		68.00	236.00
Theodolite		78.00	240.00
Total Station			2,625.00
Tow Trailer-Flat or Closed		79.00	262.00
Trash Pump		95.00	288.00
Tripod		35.00	
Utility Terrain Vehicle		188.00	473.00
Walk Behind Concrete Saw		131.00	399.00
Walk Behind Sweeper			1,050.00
Welder- Gas Engine		210.00	682.00
Welder- Multimatic		105.00	368.00
Welder- TIG/Dynasty		158.00	499.00
Yodock Barriers			48.00

*(Annual adjustment for inflation rounded to the nearest dollar for all rates beginning April 1 each year. Inflation will be adjusted by 12-month All Items CPI (CPI-U) as measured at 12/31 of the prior year by the Bureau of Labor Statistics). This rate sheet is not all-inclusive and additional classifications will be available upon request or as required on the project.*

**CONFIDENTIAL**

## East Butler

### Attachment C - GENERAL CONDITIONS / GENERAL REQUIREMENTS MATRIX

Cost Category	CM Fee & General Conditions	Cost of Work	Comments
<b>Home Office Expenses</b>			
Business Development	X		
Training & Development	X		
Human Resources	X		
Accounting	X		
Home Office Printing/Copying	X		
Home Office Supplies	X		
Licenses	X		
<b>Insurance &amp; Bonds</b>			
Liability Insurance		X	
Payment and Performance Bonds		X	
Builders Risk		X	
<b>Precon/Construction Phase Staff</b>			
Project Executive		X	
Sr. Project Manager		X	
Project Manager		X	
General Superintendent		X	
Superintendent(s)		X	
Project Engineer(s)		X	
Safety Director		X	
Safety Manager		X	
Preconstruction Manager	X		Included in Preconstruction Fee
Estimators	X		Included in Preconstruction Fee
QA/QC Manager		X	
Schedulers		X	
VDC Manager		X	
Contract Administrator		X	
<b>Jobsite Operations</b>			
Trailers/Job Office		X	
Storage Trailers		X	
Cell Phones		X	
Computer		X	
Office Supplies		X	
Vehicles, Fuel, Maintenance		X	
Travel Expenses/Per Diem		X	
Document Reproduction		X	
Site Maintenance		X	
Postage & Couriers		X	
Site Signage		X	
First Aid		X	
Temporary Toilets		X	
Water, Ice, Cups		X	
Dumpsters		X	

Permits		X	
Project Management Software		X	
Materials Layout		X	
Field Engineering and Equipment		X	
Testing		X	
Security		X	
Surveying & Layout		X	
Temporary Utilities		X	
Temporary Fencing		X	
Interim Cleaning		X	
Final Cleaning		X	
Temporary Partitions & Enclosures		X	
Fire Protection		X	
Temporary Roads		X	
Temporary Parking		X	
Temporary Laydown		X	
Parking Fees		X	
Scaffolding		X	
Safety Rails		X	
Pump Water		X	
Traffic Control		X	
Taxas		X	
Tarrif Surcharges		X	
Progress Photos		X	
Drone		X	
Information Technology		X	
Commissioning		X	



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

School Facilities Improvement Project  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

**THE OWNER:**

*(Name, legal status and address)*

Butler County School District 12-0502 a/k/a  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

**THE CONTRACTOR:**

*(Name, legal status and address)*

Boyd Jones Construction Company  
950 S. 10th Street, Suite 100  
Omaha, Nebraska 68108

**THE ARCHITECT:**

*(Name, legal status and address)*

Beringer Ciaccio Dennell Mabrey, Inc. (BCDM Architects)  
1015 North 98th Street, Suite 300  
Omaha, Nebraska 68114-2357

**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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME

Int.

9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, 12.1

### Accident Prevention

10

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

### Addenda

1.1.1

### Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

### Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### Arbitration

8.3.1, 15.3.2, **15.4**

## ARCHITECT

4

### Architect, Definition of

**4.1.1**

### Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

### Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

### Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

### Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Architect's Copyright

1.1.7, 1.5

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

## Basic Definitions

**1.1**

### Bidding Requirements

1.1.1

### Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

### Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

### Building Permit

3.7.1

## Capitalization

**1.3**

### Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

## **Certificates of Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

**Certificates of Inspection, Testing or Approval**  
13.4.4

**Certificates of Insurance**  
9.10.2

## **Change Orders**

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

**Change Orders, Definition of**  
7.2.1

## **CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

**Claims, Definition of**

### **15.1.1**

**Claims, Notice of**  
1.6.2, 15.1.3

## **CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4  
**Claims and Timely Assertion of Claims**  
15.4.1

**Claims for Additional Cost**

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

**Claims for Additional Time**

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

**Concealed or Unknown Conditions, Claims for**  
3.7.4

**Claims for Damages**

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

**Claims Subject to Arbitration**

15.4.1

**Cleaning Up**

3.15, 6.3

**Commencement of the Work, Conditions Relating to**

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

**Commencement of the Work, Definition of**  
8.1.2

**Communications**

3.9.1, 4.2.4

**Completion, Conditions Relating to**

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

**COMPLETION, PAYMENTS AND**  
9

**Completion, Substantial**

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

**Compliance with Laws**

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

**Concealed or Unknown Conditions**

3.7.4, 4.2.8, 8.3.1, 10.3

**Conditions of the Contract**

1.1.1, 6.1.1, 6.1.4

**Consent, Written**

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

**Consolidation or Joinder**

15.4.4

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of**  
7.3.1

**Construction Change Directives**

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

**Construction Schedules, Contractor's**

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

**Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

**Continuing Contract Performance**  
15.1.4

**Contract, Definition of**  
1.1.2

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, 14

**Contract Administration**

3.1.3, 4, 9.4, 9.5

**Contract Award and Execution, Conditions Relating to**

3.7.1, 3.10, 5.2, 6.1

**Contract Documents, Copies Furnished and Use of**  
1.5.2, 2.3.6, 5.3

**Contract Documents, Definition of**  
1.1.1

**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

**Contract Sum, Definition of**  
9.1

**Contract Time**

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

**Contract Time, Definition of**  
8.1.1

**CONTRACTOR**

3

**Contractor, Definition of**

3.1, 6.1.2

**Contractor's Construction and Submittal Schedules**

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

**Contractor's Liability Insurance**  
11.1

Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
2.2.2, 9.7

Contractor's Right to Terminate the Contract  
14.1

Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11

Copyrights  
1.5, 3.17

Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
1.2

**Cost, Definition of**  
7.3.4

Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**  
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work, Definition of**  
8.1.2

**Date of Substantial Completion, Definition of**  
8.1.3

**Day, Definition of**  
8.1.4

Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**  
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

**Digital Data Use and Transmission**  
1.7

Disputes  
6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
3.11

**Drawings, Definition of**  
1.1.5

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2

**Emergencies**  
10.4, 14.1.1.2, 15.1.5

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, 15.2.5

**Failure of Payment**  
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**

Guarantees (See Warranty)

**Hazardous Materials and Substances**  
10.2.4, 10.3

Identification of Subcontractors and Suppliers  
5.2.1

**Indemnification**  
3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3

**Information and Services Required of the Owner**  
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4

**Initial Decision**  
**15.2**

**Initial Decision Maker, Definition of**  
1.1.8

**Initial Decision Maker, Decisions**  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Initial Decision Maker, Extent of Authority**  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**  
10.2.8, 10.4

Inspections  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders  
1.1.1

Instructions to the Contractor  
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

**Instruments of Service, Definition of**  
**1.1.7**

Insurance  
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

Insurance, Notice of Cancellation or Expiration  
11.1.4, 11.2.3

**Insurance, Contractor's Liability**  
**11.1**

Insurance, Effective Date of  
8.2.2, 14.4.2

**Insurance, Owner's Liability**  
**11.2**

**Insurance, Property**  
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials  
9.3.2

**INSURANCE AND BONDS**

**11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1

Insured loss, Adjustment and Settlement of  
11.5

Intent of the Contract Documents  
1.2.1, 4.2.7, 4.2.12, 4.2.13

**Interest**  
**13.5**

**Interpretation**  
1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written  
4.2.11, 4.2.12

Judgment on Final Award  
15.4.2

**Labor and Materials, Equipment**  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes  
8.3.1

Laws and Regulations  
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4

Liens  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of  
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability  
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
11.3, 12.2.5, 13.3.1

Limitations of Time  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
15.1.2, 15.1.3, 15.1.5

**Materials, Hazardous**  
10.2.4, 10.3

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

**Mediation**  
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,  
15.4.1.1

**Minor Changes in the Work**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

## MISCELLANEOUS PROVISIONS

### 13

#### Modifications, Definition of

##### 1.1.1

#### Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

#### Mutual Responsibility

##### 6.2

#### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

#### Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

#### Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

#### Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

#### Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

#### Notice of Testing and Inspections

13.4.1, 13.4.2

#### Observations, Contractor's

3.2, 3.7.4

#### Occupancy

2.3.1, 9.6.6, 9.8

#### Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## OWNER

### 2

#### Owner, Definition of

##### 2.1.1

#### Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

#### Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

#### Owner's Insurance

##### 11.2

#### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

#### Owner's Right to Carry Out the Work

2.5, 14.2.2

#### Owner's Right to Clean Up

##### 6.3

#### Owner's Right to Perform Construction and to Award Separate Contracts

##### 6.1

#### Owner's Right to Stop the Work

##### 2.4

#### Owner's Right to Suspend the Work

##### 14.3

#### Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

#### Partial Occupancy or Use

9.6.6, 9.9

#### Patching, Cutting and

3.14, 6.2.5

#### Patents

3.17

#### Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

#### Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

#### Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

#### Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

#### Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

#### Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## PAYMENTS AND COMPLETION

### 9

#### Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

#### PCB

10.3.1

#### Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

#### Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

## PERSONS AND PROPERTY, PROTECTION OF

### 10

#### Polychlorinated Biphenyl

10.3.1

#### Product Data, Definition of

3.12.2

#### Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

#### Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

#### Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

**Project, Definition of**  
**1.1.4**  
**Project Representatives**  
**4.2.10**  
**Property Insurance**  
**10.2.5, 11.2**  
**Proposal Requirements**  
**1.1.1**  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
**Regulations and Laws**  
**1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,**  
**10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4**  
**Rejection of Work**  
**4.2.6, 12.2.1**  
**Releases and Waivers of Liens**  
**9.3.1, 9.10.2**  
**Representations**  
**3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1**  
**Representatives**  
**2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1**  
**Responsibility for Those Performing the Work**  
**3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10**  
**Retainage**  
**9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3**  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2, 3.12.7, 6.1.3**  
**Review of Contractor's Submittals by Owner and**  
**Architect**  
**3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2**  
**Review of Shop Drawings, Product Data and Samples**  
**by Contractor**  
**3.12**  
**Rights and Remedies**  
**1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,**  
**6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,**  
**12.2.4, 13.3, 14, 15.4**  
**Royalties, Patents and Copyrights**  
**3.17**  
**Rules and Notices for Arbitration**  
**15.4.1**  
**Safety of Persons and Property**  
**10.2, 10.4**  
**Safety Precautions and Programs**  
**3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4**  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
**3.11, 3.12, 4.2.7**  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2, 9.3.1**  
**Schedules, Construction**  
**3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2**

**Separate Contracts and Contractors**  
**1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2**  
**Separate Contractors, Definition of**  
**6.1.1**  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
**3.11, 3.12, 4.2.7**  
**Site, Use of**  
**3.13, 6.1.1, 6.2.1**  
**Site Inspections**  
**3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4**  
**Site Visits, Architect's**  
**3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4**  
**Special Inspections and Testing**  
**4.2.6, 12.2.1, 13.4**  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
**1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14**  
**Statute of Limitations**  
**15.1.2, 15.4.1.1**  
**Stopping the Work**  
**2.2.2, 2.4, 9.7, 10.3, 14.1**  
**Stored Materials**  
**6.2.1, 9.3.2, 10.2.1.2, 10.2.4**  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
**Subcontractors, Work by**  
**1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,**  
**9.6.7**  
**Subcontractual Relations**  
**5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1**  
**Submittals**  
**3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,**  
**9.9.1, 9.10.2, 9.10.3**  
**Submittal Schedule**  
**3.10.2, 3.12.5, 4.2.7**  
**Subrogation, Waivers of**  
**6.1.1, 11.3**  
**Substances, Hazardous**  
**10.3**  
**Substantial Completion**  
**4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,**  
**15.1.2**  
**Substantial Completion, Definition of**  
**9.8.1**  
**Substitution of Subcontractors**  
**5.2.3, 5.2.4**  
**Substitution of Architect**  
**2.3.3**  
**Substitutions of Materials**  
**3.4.2, 3.5, 7.3.8**  
**Sub-subcontractor, Definition of**  
**5.1.2**

Subsurface Conditions  
3.7.4  
**Successors and Assigns**  
**13.2**  
**Superintendent**  
3.9, 10.2.6  
**Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4  
**Suppliers**  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,  
9.10.5, 14.2.1  
**Surety**  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,  
15.2.7  
**Surety, Consent of**  
9.8.5, 9.10.2, 9.10.3  
**Surveys**  
1.1.7, 2.3.4  
**Suspension by the Owner for Convenience**  
**14.3**  
**Suspension of the Work**  
3.7.5, 5.4.2, 14.3  
**Suspension or Termination of the Contract**  
5.4.1.1, 14  
**Taxes**  
3.6, 3.8.2.1, 7.3.4.4  
**Termination by the Contractor**  
14.1, 15.1.7  
**Termination by the Owner for Cause**  
5.4.1.1, 14.2, 15.1.7  
**Termination by the Owner for Convenience**  
**14.4**  
**Termination of the Architect**  
2.3.3  
**Termination of the Contractor Employment**  
14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14**

#### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

#### **TIME**

### **8**

#### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

#### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,  
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,  
15.1.3, 15.4

#### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

#### **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

### **12**

#### **Uncovering of Work**

### **12.1**

#### **Unforeseen Conditions, Concealed or Unknown**

3.7.4, 8.3.1, 10.3

#### **Unit Prices**

7.3.3.2, 9.1.2

#### **Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

#### **Use of Site**

3.13, 6.1.1, 6.2.1

#### **Values, Schedule of**

9.2, 9.3.1

#### **Waiver of Claims by the Architect**

13.3.2

#### **Waiver of Claims by the Contractor**

9.10.5, 13.3.2, 15.1.7

#### **Waiver of Claims by the Owner**

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

#### **Waiver of Consequential Damages**

14.2.4, 15.1.7

#### **Waiver of Liens**

9.3, 9.10.2, 9.10.4

#### **Waivers of Subrogation**

6.1.1, 11.3

#### **Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,  
15.1.2

#### **Weather Delays**

8.3, 15.1.6.2

#### **Work, Definition of**

### **1.1.3**

#### **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
13.2, 13.3.2, 15.4.4.2

#### **Written Interpretations**

4.2.11, 4.2.12

#### **Written Orders**

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

**The term "Contractor" shall have the same meaning as Construction Manager in the AIA Document A133™ - 2019.**

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

#### **§ 1.1.9 Approved**

When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Architect shall be understood.

#### **§ 1.1.10 Provide**

When the word "provide," including derivatives, is used, it shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications.

#### **§ 1.1.11 Addenda**

Addenda are written or graphic instruments issued prior to the execution of the Contract that modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

#### **§ 1.1.12 Bulletins**

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract that request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

#### **§ 1.1.13 Knowledge**

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) or discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights, except as provided otherwise in any agreement between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's, Architect's consultants', or any other party's reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

## **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **§ 1.9 Confidentiality**

**§ 1.9.1** The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if the Owner fails to make payments to the Contractor as the Contract Documents require or a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

### **§ 2.3 Information and Services Required of the Owner**

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

#### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

#### **§ 2.6 EXTENT OF OWNER RIGHTS**

**§ 2.6.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

**§ 2.6.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in a professional and safe manner and in accordance with the Contract Documents. If the Contractor finds that any of the Contract Documents are not per federal, state, and local laws, regulations, and ordinances, then Contractor will notify Architect within fifteen (15) days.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the visible conditions and limitations under which the Work is to be performed, including (i) the location, visible condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment. The Owner assumes no responsibility or liability for the safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

Init.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper

execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's prior inspections, reviews, and preconstruction services for the Project.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

#### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

#### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

#### § 3.18.1

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.1.1** To the fullest extent permitted by law the Owner shall indemnify and hold harmless the Contractors, its officers, directors, or members, subcontractors, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Owner, Architect, or others retained by the Owner for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.3** The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

**§ 3.18.4** The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the final payment is due from Owner, and (with the Owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and

assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide 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 will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

Init.

### **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

**§ 5.4.4** Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent or reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order.

Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

## **§ 7.2 Change Orders**

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

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

**§ 7.2.2** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

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

**§ 8.3.3** Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the work, (iii) loss of productivity, or (v) other similar claims (items I through iv herein collectively referred to in this Section 8.3.2 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner, any separate contractor of Owner, or anyone for whose acts the Owner is responsible, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

**§ 8.3.4** If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 day of full execution of this Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

**§ 9.2.2** The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and

Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner, the Construction Manager or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If any trade breakdown had been initially approved and subsequently used but was later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .3 Intentionally deleted
- .4 Payment shall not include any charges for overhead or profit on stored materials.
- .5 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Contractor shall indemnify and hold Owner harmless from any liens,

claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to Contractor.

**§ 9.3.4** Contractor shall submit Applications for Payment using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

**§ 9.3.5** By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Nebraska covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Nebraska and may justify termination of Contractor's Contract with Owner.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.4.3** Notwithstanding any other provision in this Agreement, the issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the

Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both,

Init.

under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

#### § 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If

the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice. The Contractor shall not use explosives or store them on Owner's property without written approval from the Owner and reasonable advance notice to the Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to

the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

Injury or Damage to Person or Property. If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other parties to investigate the matter.

§ 10.2.9 When present on the Owner's property, the Contractor, Subcontractors, a Sub-subcontractor, or anyone directly or indirectly employed by or representing any of them, shall

- .1 Intentionally deleted;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the Owner's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.11 When all or a portion of the Work is suspended for any reasons, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

**§ 10.3 Hazardous Materials and Substances**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance (as defined by the contract documents) not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated

biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 If Contractor imports hazardous materials onto the project site, then Contractor hereby indemnifies and holds harmless the Owner, its consultants, trustees, officers, agents and employees, against any claims arising out of or related to such importation, including but not limited to costs and expenses the Owner incurs for remediation of a material or substance the contractor brings to the site, as provided for in subparagraph 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 Intentionally omitted.

§ 10.3.6 Intentionally omitted.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

The Contractor shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™-2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents

*(Paragraphs deleted)*

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### § 12.2 Correction of Work

##### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor

shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

All aspects of the Contract shall be governed by, and construed in accordance with, the internal laws of the State of Nebraska, without regard to its choice of law rules. Any action between the Owner and the Contractor concerning causes of action arising from or related to the Contract must be brought solely and exclusively in the appropriate state or federal trial court for the county in which the Project is located; and the Owner and the Contractor hereby waive any objection to the jurisdiction of such courts over causes of action arising from or related to this Agreement, including but not limited to objections on the basis of lack of personal jurisdiction, improper venue, or *forum non conveniens*.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 or set forth elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract

as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing.

### § 13.6 GENERAL PROVISIONS

§ 13.6.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such

statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

**§ 13.6.2** Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

**§ 13.6.3** Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract Documents.

**§ 13.6.4** Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or in the applicable subcontract.

### **§ 13.7 NO ORAL WAIVER**

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

### **§ 13.8 BACKGROUND CHECKS**

The Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the Owner. The Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.
- .3 Because the Owner has not made Payment on a Certificate of Payment within the time stated in the Contract Documents

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions

Init.

of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon 20 additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2**

*(Paragraphs deleted)*

Intentionally omitted.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated

portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with the concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

*(Paragraphs deleted)*

**§ 15.1.7** The parties agree to waive all claims against each other for consequential damages that may arise out of or relate to this Agreement. The provision of this section shall also apply to the termination of this Agreement and survive such termination.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both.

**§ 15.2.6** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

*(Paragraph deleted)*

**§ 15.2.7** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

*(Paragraph deleted)*

**§ 15.2.8** The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation or any other form of dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

**§ 15.3 Mediation**

**§ 15.3.1** The parties may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim, dispute, or other matter that is not mediated or that is not resolved in mediation will be subject to litigation pursuant to Section 13.1.

*(Paragraphs deleted)*

**§ 15.4 No Arbitration**

The Contractor and the Owner shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract. Any reference herein to arbitration in connection with such Claims or disputes is hereby deemed void.

*(Paragraphs deleted)*

# **Additions and Deletions Report for**

## **AIA® Document A201® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:08:32 on 02/16/2026.

### **PAGE 1**

School Facilities Improvement Project  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

...

*(Name, legal status and address)*

Butler County School District 12-0502 a/k/a  
East Butler Public Schools  
212 S. Madison Street  
Brainard, NE 68626

### **THE CONTRACTOR:**

*(Name, legal status and address)*

Boyd Jones Construction Company  
950 S. 10th Street, Suite 100  
Omaha, Nebraska 68108

### **THE ARCHITECT:**

...

Beringer Ciaccio Dennell Mabrey, Inc. (BCDM Architects)  
1015 North 98th Street, Suite 300  
Omaha, Nebraska 68114-2357

~~TABLE OF ARTICLES~~

TABLE OF ARTICLES

**PAGE 10**

The term "Contractor" shall have the same meaning as Construction Manager in the AIA Document A133™ - 2019.

...

**§ 1.1.9 Approved**

When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Architect shall be understood.

**§ 1.1.10 Provide**

When the word "provide," including derivatives, is used, it shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications.

**§ 1.1.11 Addenda**

Addenda are written or graphic instruments issued prior to the execution of the Contract that modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

**§ 1.1.12 Bulletins**

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract that request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

**§ 1.1.13 Knowledge**

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) or discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

**PAGE 12**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including ~~copyrights~~ copyrights, except as provided otherwise in any agreement between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' Architect's, Architect's consultants', or any other party's~~ reserved rights.

...

The parties shall agree upon ~~written~~ protocols governing the transmission and use of, ~~and reliance on,~~ of Instruments of Service or any other information or documentation in digital form.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to ~~written~~ protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### **§ 1.9 Confidentiality**

**§ 1.9.1** The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

**§ 1.9.2** The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

**§ 1.9.3** The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

**§ 1.9.4** The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

PAGE 13

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

PAGE 14

### **§ 2.6 EXTENT OF OWNER RIGHTS**

**§ 2.6.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

**§ 2.6.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

§ 3.1.2 The Contractor shall perform the Work in a professional and safe manner and in accordance with the Contract Documents. If the Contractor finds that any of the Contract Documents are not per federal, state, and local laws, regulations, and ordinances, then Contractor will notify Architect within fifteen (15) days.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the visible conditions and limitations under which the Work is to be performed, including (i) the location, visible condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment. The Owner assumes no responsibility or liability for the safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work.

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements ~~may~~ shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor,

improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.  
**PAGE 17**

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's prior inspections, reviews, and preconstruction services for the Project.

**PAGE 18**

**§ 3.10.4** The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

**PAGE 20**

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

**§ 3.13.3** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

**PAGE 21**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 To the fullest extent permitted by law the Owner shall indemnify and hold harmless the Contractors, its officers, directors, or members, subcontractors, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Owner, Architect, or others retained by the Owner for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment, construction, until the final payment is due from Owner, and (with the Owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

PAGE 24

~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into~~

~~similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed~~  
Sub-subcontractors. § 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

...

~~§ 5.4.2 Upon such assignment, if the Work~~ If the Work in connection with a subcontract has been suspended for more than 30 days, thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from any increase in direct costs incurred by such Subcontractor as a result of the suspension.

...

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

PAGE 25

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ apparent or reasonably discoverable.

...

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work,

whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.  
PAGE 26

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

PAGE 28

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the work, (iii) loss of productivity, or (v) other similar claims (items I through iv herein collectively referred to in this Section 8.3.2 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner, any separate contractor of Owner, or anyone for whose acts the Owner is responsible, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~  
§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall

submit a schedule of values to the Architect within 10 day of full execution of this Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner, the Construction Manager or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If any trade breakdown had been initially approved and subsequently used but was later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

PAGE 29

§ 9.3.1 At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .3 Intentionally deleted
- .4 Payment shall not include any charges for overhead or profit on stored materials.
- .5 Payments for materials or equipment stored on or off the site shall be conditioned upon ~~compliance by the Contractor with submission by the Contractor of bills of sale or such other procedures~~ satisfactory to the Owner to establish the Owner's title to such materials and or equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also

result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to Contractor.

**§ 9.3.4** Contractor shall submit Applications for Payment using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

**§ 9.3.5** By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Nebraska covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Nebraska and may justify termination of Contractor's Contract with Owner.

PAGE 30

**§ 9.4.3** Notwithstanding any other provision in this Agreement, the issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

PAGE 31

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

PAGE 32

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding

dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. § 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

PAGE 33

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

PAGE 34

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice. The Contractor shall not use explosives or store them on Owner's property without written approval from the Owner and reasonable advance notice to the Architect.

PAGE 35

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. Injury or Damage to Person or Property. If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other party to investigate the matter. parties to investigate the matter.~~

**§ 10.2.9** When present on the Owner's property, the Contractor, Subcontractors, a Sub-subcontractor, or anyone directly or indirectly employed by or representing any of them, shall

- .1 Intentionally deleted;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the Owner's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors.

**§ 10.2.10** The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

**§ 10.2.11** When all or a portion of the Work is suspended for any reasons, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

...

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance (as defined by the contract documents) not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

PAGE 36

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. If Contractor imports hazardous materials onto the project site, then Contractor hereby indemnifies and holds harmless the Owner, its consultants, trustees, officers, agents and employees, against any claims arising out of or related to such importation, including but not limited to costs and expenses the Owner incurs for remediation of a material or substance the contractor brings to the site, as provided for in subparagraph 3.18.~~

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

~~§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Intentionally omitted.~~

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. Intentionally omitted.~~

...

The Contractor shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™-2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents

#### **~~§ 11.1 Contractor's Insurance and Bonds~~**

~~§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~

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

~~§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

~~§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by~~

the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### ~~§ 11.2 Owner's Insurance~~

~~§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~

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

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

#### ~~§ 11.3 Waivers of Subrogation~~

~~§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

~~§11.5 Adjustment and Settlement of Insured Loss~~

~~§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

PAGE 37

~~§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.~~

...

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. All aspects of the Contract shall be governed by, and construed in accordance with, the internal laws of the State of Nebraska, without regard to its choice of law rules. Any action between the Owner and the Contractor concerning causes of action arising from or related to the Contract must be brought solely and exclusively in the appropriate state or federal trial court for the county in which the Project is located; and the Owner and the Contractor hereby waive any objection to the jurisdiction of such courts over causes of action arising from or related to this Agreement, including but not limited to objections on the basis of lack of personal jurisdiction, improper venue, or *forum non conveniens*.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, Section 13.2.2 or set forth elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

PAGE 38

§ 13.3.1 Duties-Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located-writing.

## § 13.6 GENERAL PROVISIONS

§ 13.6.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.6.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.6.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract Documents.

§ 13.6.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or in the applicable subcontract.

### **§ 13.7 NO ORAL WAIVER**

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

### **§ 13.8 BACKGROUND CHECKS**

The Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the Owner. The Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

PAGE 39

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be ~~stopped;~~stopped.
- .3 ~~Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for the Owner has not made Payment on a Certificate of Payment within the time stated in the Contract Documents; or~~
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. Documents~~

...

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~seven~~20 additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

PAGE 40

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

...

~~§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent~~

~~.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or~~

~~.2 that an equitable adjustment is made or denied under another provision of the Contract. Intentionally omitted.~~

...

~~§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.~~

~~PAGE 41~~

~~§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. later; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with the concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.~~

~~PAGE 42~~

#### ~~§ 15.1.7 Waiver of Claims for Consequential Damages~~

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

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

~~§ 15.1.7 The parties agree to waive all claims against each other for consequential damages that may arise out of or relate to this Agreement. The provision of this section shall also apply to the termination of this Agreement and survive such termination.~~

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. ~~Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered.~~ Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

...

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both. ~~The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

**§ 15.2.6.1** ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

**§ 15.2.7** ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.2.8** ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

**§ 15.2.8** The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation or any other form of dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. The parties may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim, dispute, or other matter that is not mediated or that is not resolved in mediation will be subject to litigation pursuant to Section 13.1.~~

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

mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

#### **§ 15.4 No Arbitration**

The Contractor and the Owner shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract. Any reference herein to arbitration in connection with such Claims or disputes is hereby deemed void.

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

~~§ 15.4.4.1~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:08:32 on 02/16/2026 under Order No. 20250115061 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

## Elementary Principal Report March Board Meeting



### I. **Preschool/Kindergarten Round-Up**

- A. Information has been communicated about preschool/kindergarten for 2026-2027. The material was shared on social media/school bulletin and will be advertised in the Banner Press, Seward Independent, and Wahoo Newspaper.
  - 1. Kindergarten Registration and Round-Up will take place in Dwight on March 26 and in Brainard on March 23 at 6:30 p.m. Packets have been mailed to interested families and allows them time to fill out the paperwork before meeting.
  - 2. Preschool Registration and Round-Up will take place in Dwight on April 21 and in Brainard April 23 from 6:30-7:30. Applications are accepted in the order of current students, in-district students, and out of district students.
- B. Possible 2026-2027 kindergarten enrollment numbers based on current preschool enrollment numbers.
  - 1. Dwight – 8 students
  - 2. Brainard – 10 students
- . Possible 2026-2027 preschool enrollment numbers.
  - 1. Dwight – 16 students
  - 2. Brainard – 18 students

### II. **Parent-Teacher Conferences**

- A. Percentage of students represented at conferences:
  - 1. Dwight - 98%
  - 2. Brainard - 93%

### III. **Tentative Assessment Schedule**

- A. NSCAS - Gr. 3-6 Reading - April 8-9
- B. NSCAS - Gr. 3-6 Math - April 14-15
- C. NSCAS - Gr. 5 Science - April 21-22
- D. Acadience Testing – May 4-8
- E. NWEA Testing - May 4-8

### IV. **Concordia Student Teachers**

- A. The following Concordia University student teachers will be at East Butler March 9-May 1.
  - 1. Madison Beachal- Mrs. Maca/Mrs. Janda
  - 2. Bryce Karlin- Mr. Hlavac
  - 3. Lauren Stanley - Mrs. Jisa

### V. **Grade 4-6 Cultural Arts Field Trip**

- A. Students in grades 4-6 will be participating in a cultural arts field trip on March 5. They will be attending a performance at the Holland Center. CeCe Lyons and Isabel Svoboda were chosen to perform on stage with the Omaha Symphony. Students will then tour the Joslyn Art Museum.

### VI. **National Poison Prevention Week Proclamation**

- A. Aliyah Jaras (grade 6) and Sophia Svoboda (grade 5) were chosen as winners of a poster contest for poison prevention week. They will be taking part in a proclamation signing at the state capital with Governor Pillen on March 17. They also won a \$100 visa gift card for their room.



## **Secondary Principal Report March 2026 – School Board Meeting**

### **I. ESU 7 Annual Consultation**

- A. ESU 7 and the administrative team met via Zoom to decide next year's services. ESU 7 facilitated the meeting. Many of the services will stay the same, such as: technology, LMHP, teacher/principal coaching, and support on our professional learning days.

### **II. Targeted Improvement Plan (TIP)**

- A. ESU 7 held a TIP meeting on 3-2-2026. TIP is a plan that will help our school identify areas of strength and weakness in how we serve our special education population. They have started a new process to create your TIP document. The Nebraska Department of Education mandates that each school review the student data of its special education students and create a plan that will benefit them.

### **III. Spring ACT**

- A. Juniors will take the annual spring ACT on Tuesday, March 24. The juniors are currently working on the John Baylor Test Prep materials in Math, English, and Science.

### **IV. reFRESH Grant**

- A. The Career and Technical Education teachers have been meeting to complete the reFRESH document. It is a mandatory process for Nebraska School Districts to maintain Perkins V funding eligibility. The document requires us to review our outcomes, evaluate our progress, and update CTE plans for the future. Perkins V mandates that the updates occur every two years.

### **V. AQuESTT Classification Rule**

- A. The Accountability for a Quality Education System Today and Tomorrow (AQuESTT) has announced changes to its school classification system. The spring NSCAS and ACT scores still count towards the classification. NDE has provided us with new scoring guidance. Growth calculations, dual credit classes, & CTE pathways will now be part of the scoring process.