

Board of Education Special Meeting

Monday, June 3, 2024 6:00 PM

1. Call to Order

2. Flag Salute

3. Open Meeting Act

3.1. The "Open Meetings Act" has been duly posted at the front of the room. It has also been advertised in the Beacon-Observer Newspaper ahead of time.

4. Roll Call

4.1. Excuse Absent Board Members

Motion to excuse JC Ourada. This motion, made by Alicia Beavers and seconded by Morgan Fouts, Passed.

Alicia Beavers: Yea, Cole Brodine: Yea, Morgan Fouts: Yea, Hannah Hild: Yea, Lynette Mitchell: Yea

5. Citizens Comments

The purpose of public participation is not to provide an opportunity for the board to act upon matters concerning the public, but instead, it is a forum for the public to provide information and be heard by the members of the board. To acknowledge the purpose of public participation, the chair may wish to recognize the public comment received during this portion of the agenda, while emphasizing the board will not respond and/or act pertaining to matters brought before the board.

6. Information Items

6.1. Boiler Replacement - Discuss and consider bids for boiler replacement.

7. Action Items

7.1. Boiler Replacement

Accept Anderson Brothers bid of \$375,410.00 to replace the boiler using Depreciation Funds.

Move to accept Anderson Brothers bid of \$375,410.00 to replace the boiler using Depreciation Funds. This motion, made by Morgan Fouts and seconded by Hannah Hild, Passed.

Alicia Beavers: Yea, Cole Brodine: Yea, Morgan Fouts: Yea, Hannah Hild: Yea, Lynette Mitchell: Yea

8. Next Regular Board Meeting

June 17 @ 6:00 PM

9. Adjournment

motion to adjourn the meeting. This motion, made by Alicia Beavers and seconded by Cole Brodine, Passed.

Alicia Beavers: Yea, Cole Brodine: Yea, Morgan Fouts: Yea, Hannah Hild: Yea, Lynette Mitchell: Yea



Project: Elm Creek Public Schools Boiler Replacement

ETI Project No.: 2024-087

Bid Date: May 30, 2024

Bid Time: 2:00 p.m.

COMPANY	BID BOND Acknowledged Y/N	ADDENDUM ACKNOWLEDGED		BASE BID	ALTERNATE #1 Deduct alternate price to leave the existing pneumatic temperature controls for AHU-2 & AHU-3
		#1 Y/N			
Anderson Brothers	Y 5% of Bid	Y		\$ 375,410	Deduct: 17,528 \$
Ruths	Y 5% of Bid	Y		\$ 447,450	Deduct: 16,000 \$
Rasmussen Mechanical	Y 5% of Bid	Y		\$ 484,230 484,230	Deduct: 15,935 \$
Waggoner Plumbing	Y 5% of Bid	Y		\$ 438,800	Deduct: 15,935 \$
				\$	Deduct: \$
				\$	Deduct: \$
				\$	Deduct: \$
				\$	Deduct: \$

Alternate #1: Contractor to provide a deduct alternate price to leave the existing pneumatic temperature controls for AHU-2 & AHU-3. The base bid price shall include the upgrade to digital controls as shown on the drawings and specifications. New boilers, pumps, and hot water control valves shall be provided as digital controls regardless of the deduct alternate.

**SECTION 004100
BID PROPOSAL FORM
SEALED BID #001**

THE PROJECT AND THE PARTIES

1.01 TO:

- A. Owner
Tom Moore, Superintendent
230 E Calkins Ave, Elm Creek, NE 68836

1.02 FOR:

- A. Project: Elm Creek Public Schools Boiler Replacement
- B. Address: 230 E Calkins Ave, Elm Creek, NE 68836

1.03 SUBMITTED BY: (BIDDER TO ENTER NAME AND ADDRESS)

- A. Bidder's Full Name _____
 1. Address _____
 2. City, State, Zip _____
- B. Bidders Legal Name: Anderson Brothers Electric, Plumbing & Heating Inc.
 Dated 1985
 (a Corporation organized and existing under the laws of the State of (Nebraska____))
 or a partnership consisting of: _____ partners or an
 individual hereinafter called the bidder.
 Address 2600 E Hwy 30 Rover Park #8
 City, State, Zip Kearney, NE 68847
 Phone No. 308-236-6437 Fax No. _____

1.04 ADDENDA

- A. The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.
 - 1. Addendum # 1 Dated 5/24/2024.
 - 2. Addendum # _____ Dated _____.
 - 3. Addendum # _____ Dated _____.

The undersigned in compliance with your Invitation for Bids for the Elm Creek Public Schools Boiler Replacement Project, having examined the plans and specifications with related documents and the site of the proposed work and being familiar with all of the conditions surrounding the construction of the proposed project, including the availability of labor, hereby propose to furnish all labor, materials and supplies and to construct the project in accordance with the Contract Documents, at the prices stated below. The prices are to cover all expenses incurred in performing the work required under the Contract Documents of which this proposal is a part.

We have included the required 5% security Bid Bond as required by the Instruction to Bidders. Indicate in writing as "Yes" that security is enclosed with this Bid Form:

YES

For all work described in the specifications and shown on the plans for the project, we agree to perform all work for the sum of:

1.05 BASE BID:

For all work described in the specifications and shown on the plans for the project, we agree to perform all work for Elm Creek Public Schools Boiler Replacement for the Base Bid sum of:

Three Hundred, seventy-five thousand and Four Hundred Ten Dollars

(Amount written in words)

\$ 375,410⁰⁰

(Amount written in figures)

As part of Bid, the Bidder declares that he/she is and will comply with the Nebraska Fair Labor SS73-102 to 73-105 RRS Nebr. in pursuit of its business and in execution of this Contract.

1.06 ALTERNATE BIDS:

- A. Contractor to provide a deduct alternate price to leave the existing pneumatic temperature controls for AHU-2 & AHU-3. The base bid price shall include the upgrade to digital controls as shown on the drawings and specifications. New boilers, pumps, and hot water control valves shall be provided as digital controls regardless of the deduct alternate.

(Deduct) Seventeen thousand and Five Hundred Twenty-eight Dollars

(Amount written in words)

(Deduct) \$ - 17,528.⁰⁰

(Amount written in figures)

1.07 ACCEPTANCE

- A. This offer shall be open to acceptance and is irrevocable for thirty (30) days from the bid closing date.
- B. If this bid is accepted by the Owner within the time period stated above, we will:
 - 1. Execute the Agreement within seven days of receipt of Notice of Award.
 - 2. Furnish the required Performance and Payment Bonds within seven days of receipt of Notice of Award.
 - 3. Commence work within seven days after written Notice to Proceed of this bid.
- C. If this bid is accepted within the time stated, and we fail to commence the Work or fail to provide the required Performance and Payment Bonds, the security deposit shall be forfeited as damages to the Owner by reason of failure, limited in amount to the lesser of the face value of the security deposit of the difference between this bid and the bid upon which a Contract is signed.
- D. In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

1.08 CONTRACT TIME

If this bid is accepted, we will:

- A. Substantially complete all work by Coils must be installed no later than August 2, 2024. Heating must be operable no later than October 15. Substantial completion of the project must be achieved by November 15, 2024.

1.09 BID FORM SIGNATURE

- A. If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

The Corporate Seal of:

Bidder: Anderson Brothers Electric, Plumbing & Heating, Inc.

was hereunto affixed in the presence of:

Authorized Officer, Title: *Kenneth J. Muchmore*

Seal: Kenneth J Muchmore, President

END OF SECTION 004100

INLAND
INSURANCE COMPANY

UNIVERSAL
SURETY COMPANY

P.O. Box 80468 • Lincoln, Nebraska 68501-0468
PHONE ♦ 1-800-755-2666
FAX ♦ 402-435-3274

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we,
Anderson Bros. Electric, Plumbing & Heating, Inc.

2600 Hwy 30 E, Rovar Park #8; PO Box 159; Kearney, NE 68848-0159

as Principal, hereinafter called the principal, and **Universal Surety Company** a corporation duly organized under the laws of the State of Nebraska, as Surety, hereinafter called the Surety, are held and firmly bound unto

Elm Creek Public Schools; 230 East Calkins Avenue; Elm Creek, NE 68836

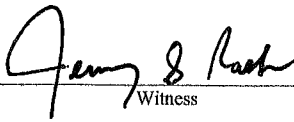
as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid-----

----- (\$ 5% of Bid) DOLLARS,
lawful money of the United States of America, for the payment of which sum of money well and truly to be made, the said Principal and Surety bind themselves, their and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for:
Elm Creek Public Schools - Boiler Replacement Project
230 East Calkins Avenue; Elm Creek, NE 68836

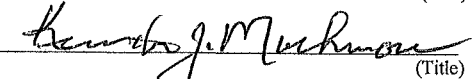
NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed, Sealed and Dated, this 30th day of May, 2024.



Witness


Witness

Anderson Bros. Electric, Plumbing & Heating,
Principal (Seal)

By: 
(Title)

Universal Surety Company
Surety (Seal)

By: 
Joan Leu, Attorney-in-Fact

UNIVERSAL SURETY COMPANY

Lincoln, Nebraska

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That the **UNIVERSAL SURETY COMPANY**, a corporation of the State of Nebraska having its principal office in the City of Lincoln, Nebraska, pursuant to the following Bylaw, which was adopted by the Board of Directors of the said Company on July 23, 1981, to wit:

"Article V-Section 6. **RESIDENT OFFICERS AND ATTORNEYS-IN-FACT.** The President or any Vice President, acting with any Secretary or Assistant Secretary, shall have the authority to appoint Resident Vice Presidents and Attorneys-In-Fact, with the power and authority to sign, execute, acknowledge and deliver on its behalf, as Surety: Any and all undertakings of suretyship and to affix thereto the corporate seal of the corporation. The President or any Vice President, acting with any Secretary or Assistant Secretary, shall also have the authority to remove and revoke the authority of any such appointee at any time."

does hereby make, constitute and appoint

Sharon K. Murray, Firth, Nebraska or David A. Dominiani, Lincoln, Nebraska
or Maura P. Kelly, Council Bluffs, Iowa or Joan Leu, Ralston, Nebraska or Jacqueline L. Drey
or Kevin J. Stenger or David G. Jesse, Omaha, Nebraska or Dustin Cooper, Elkhorn, Nebraska

its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety:
Any and all undertakings of suretyship

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Lincoln, Nebraska, in their own persons.

The following Resolution was adopted at the Regular Meeting of the Board of Directors of the **UNIVERSAL SURETY COMPANY**, held on July 23, 1981:
"RESOLVED, That the signatures of officers of the Company and the seal of the Company may be affixed by facsimile to any Power of Attorney executed in accordance with Article V-Section 6 of the Company Bylaws: and that any such Power of Attorney bearing such facsimile signatures, including the facsimile signature of a certifying Assistant Secretary and facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking or contract of suretyship to which it is attached."

All authority hereby conferred shall remain in full force and effect until terminated by the Company.
IN WITNESS WHEREOF, **UNIVERSAL SURETY COMPANY** has caused these presents to be signed by its President and its corporate seal to be hereunto affixed this 16th day of February, 20 22.

Carol J. Clark

UNIVERSAL SURETY COMPANY

Curt L. Hartter



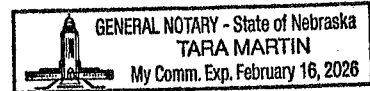
Secretary/Treasurer
State of Nebraska }
County of } ss.
 } Lancaster

By

President

On this 16th day of February, 20 22, before me personally came Curtis L. Hartter, to me known, who being by me duly sworn, did depose and say that (s)he resides in the County of Lancaster, State of Nebraska; that (s)he is the President of the **UNIVERSAL SURETY COMPANY**, the corporation described in and which executed the above instrument; that (s)he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that (s)he signed (his) (her) name by like order; and that Bylaw, Article V-Section 6, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

Tara Martin



My Commission Expires February 16, 2026.

Notary Public

I, Philip C. Abel, Director of **UNIVERSAL SURETY COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said **UNIVERSAL SURETY COMPANY**, which is still in full force and effect.

Signed and sealed at the City of Lincoln, Nebraska this 30th day of May, 20 24.

Philip C. Abel

Director





AIA® Document A104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 3rd day of June in the year 2024
(In words, indicate day, month and year.)

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

Elm Creek Public Schools, legally known as
Buffalo County School District 10-0009
230 E. Calkins Ave.
Elm Creek, NE 68836
Attn: Superintendent
(308) 856-4300

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

Anderson Bros. Electric, Plumbing & Heating, Inc.
2600 Hwy 30 E Rovar Park #8
Kearney, NE 68847

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

Boiler Replacement Project
Elm Creek Public Schools
230 E. Calkins Ave.
Elm Creek, NE 68836

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

Engineering Technologies Inc.
825 M St., Suite 200
Lincoln, NE 68508
Attn: Derek Kotschwar, PE
(402) 476-1273
dkotschwar@eti-engineers.com

The Owner and Contractor 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.

TABLE OF ARTICLES

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21	CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents listed in Article 6 of this Agreement or reasonably inferable by the Contractor from the Contract Documents as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

The date of this Agreement.

Init.

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User Notes:

(1280656196)

[] A date set forth in a notice to proceed issued by the Owner.
(Paragraphs deleted)

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

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work by the following date:

(Paragraph deleted)
November 15, 2024

§ 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 Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Installation of All Coils	August 2, 2024
Heating Operable	October 15, 2024

§ 2.3.3 The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that the Owner has entered into, or will enter into, binding agreements demising all or part of the premises where the Work is to be completed based upon the Contractor's achieving Substantial Completion of the Work within the Contract Time including without limitations its obligations to provide classrooms for students. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure.

ARTICLE 3 CONTRACT SUM

(Paragraphs deleted)
(Table deleted)

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's proper performance of the Contract and completion of the Work. The Contract Sum, including without limitation general conditions and the Contractor's overhead and profit, shall be a lump sum in the amount of Three Hundred Seventy-Five Thousand Four Hundred Ten Dollars (\$375,410.00).

§ 3.2 Intentionally deleted.

§ 3.3 Intentionally deleted.

§ 3.4 Intentionally deleted.

§ 3.5 Intentionally deleted.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

(Paragraphs deleted)

§ 4.1.1 Based upon Applications for Payment (including all supporting documentation) submitted to the Owner and Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Nebraska:

(Paragraphs deleted)

(i) A current Sworn Statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the application for payment, and the amount to be
(Table deleted)
paid to the Contractor from such progress payment.

(Table deleted)

(Paragraphs deleted)(ii) Commencing with the second (2nd) Application for Payment submitted by the Contractor, sworn statements from all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors, demonstrating receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment.

(Paragraphs deleted)

(iii) Such other information, documentation, and materials as the Owner, the Engineer, or the title insurer may require.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

(Paragraph deleted)

§ 4.1.3 Payments are due and payable thirty (30) days following the Contractor's presentation to the Owner of an Application for Payment that is approved and signed by the Engineer, provided that such Engineer-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 that actually occurs after the Engineer-approved Application for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows: 10%.

(Paragraphs deleted)

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 or (ii) any other right or remedy that the Owner has under the Contract Documents, at law, or in equity.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Engineer in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor is due and payable thirty (30) days following the Owner's receipt from Engineer of the final Certificate for Payment, provided that such Engineer-approved 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 finally payment not made within twenty (20) days following the next

regularly scheduled meeting that actually occurs after the Engineer-approved Certificate for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

(Paragraphs deleted)

All disputes relating to this Agreement shall be resolved pursuant litigation. Mandatory and exclusive venue for any disputes shall be in the appropriate state or federal court for the county in which the Project is located. Nothing herein shall preclude the Parties, if they so choose, from resolving any disputes arising from this Contract via negotiated settlement or voluntary mediation.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Project Manual & Specifications prepared by Engineering Technologies Inc. dated May 10, 2024.

Section	Title	Date	Pages
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§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Drawings prepared by Engineering Technologies Inc. dated May 10, 2024.

Number	Title	Date
CS	Cover Sheet	5/10/2024
M0.0	Mechanical General Information	5/10/2024
M1.0	Mechanical Plans	5/10/2024
M2.0	HVAC Plans	5/10/2024
M3.0	Mechanical Schedules & Details	5/10/2024
E1.0	Electrical Plans	5/10/2024
E2.0	Electrical Specifications, Symbols, & Schedules	5/10/2024

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
1	5/24/2024	2

Init.

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Table deleted)(Paragraphs deleted)

(Paragraphs deleted)

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. 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 Engineer. 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 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, or between the contract Documents and applicable standards, codes, and ordinances, 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 Engineer's interpretation. The terms and conditions of this Section 7.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 9.1 and 9.6.

§ 7.2 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 between any persons or entities other than the Owner and the Contractor.

§ 7.3 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.

§ 7.4 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 Engineer and the Engineer'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.

§ 7.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights, except as otherwise provided in any agreement between the Owner and the Engineer. 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 Engineer's or Engineer's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, 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 this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer’s consultants.

§ 7.6 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. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data unless agreed otherwise in writing.

§ 7.7 Intentionally deleted.

§ 7.8 Severability

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.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, 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 by email

to the Owner at: Elm Creek Public Schools
Attn: Superintendent
230 E. Calkins Ave.
Elm Creek, NE 68836

with a copy to: Coady H. Pruet, Owner’s Legal Counsel
KSB School Law, PC, LLO
206 S. 13th St., Suite 1100
Lincoln, NE 68508

to the Contractor at: Anderson Bros. Electric, Plumbing & Heating, Inc.
Attn: President
2600 Hwy 30 E Rovar Park #8
Kearney, NE 68847

and to the Engineer at: Engineering Technologies Inc.
Attn: Derek Kotschwar
825 M St., Suite 200
Lincoln, NE 68508

§ 7.9.2 Notice of Claims 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.

§ 7.10 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s

interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Intentionally deleted.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 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.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the 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 is 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.

§ 8.3 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 any other remedies the Owner may have, correct such default or neglect. The Engineer may, pursuant to Section 15.4.3, 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 the Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Engineer, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

§ 8.4 Extent of the Owner Rights

§ 8.4.1 The rights stated in this Article 8 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.

§ 8.4.2 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 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 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 shall have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 17.2.1, 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 9.1.1.

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§ 9.1.2 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 8.1.2, 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 Engineer any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer 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. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Engineer, or the work installed by other contractors, is not guaranteed by the Engineer or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner

§ 9.1.3 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 Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 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, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 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.

§ 9.3 Labor and Materials

§ 9.3.1 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.

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Engineer 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 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 under normal usage. The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 9.5 Taxes

Owner is a tax-exempt entity under state and/or federal law. Owner will provide Contractor with tax-exempt status documentation upon request.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 9.6.2 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. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in accordance with the most recent schedule submitted to the Owner and Engineer.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Engineer reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Engineer 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. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Engineer will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Engineer will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract

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Documents. The Engineer's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Engineer will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

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.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

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 material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Engineer with access to the Work in preparation and progress wherever located.

§ 9.14 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 Engineer 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 Engineer. 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 Engineer.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Engineer, Engineer's consultants, and its officers, board members, consultants, agents, employees and representatives of any of them (collectively, the "Indemnitees") from and against any and all claims, demands, damages, losses, expenses, lawsuits, actions, cross-claims, counterclaims, third-party actions, liens, damages, debts, obligations, exemplary damages, consequential damages, punitive damages, liabilities, judgments, and causes of action, including but not limited to attorneys' fees and expenses, that arise out of, are related to, or are in connection with the Contract, the Work, the Contractor's performance hereunder, and/or the Contractor's conduct at or related to the Work or the Owner's property (hereinafter "Indemnity Claims"), provided that any such Indemnity Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of the same, but only to the extent caused by the intentional, reckless, or 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. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1. Notwithstanding the foregoing, the Contractor's obligations in this section 9.15.1 specifically except any obligation to hold harmless, defend, or indemnify the Indemnitees against any Indemnity Claim solely caused by the Owner's own negligent or reckless conduct.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ENGINEER

§ 10.1 The Engineer 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 Engineer issues the final Certificate for Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Intentionally deleted.

§ 10.3 The Engineer will visit the site at intervals appropriate to the stage of the construction 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 Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Engineer 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 Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer 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.

§ 10.5 Based on the Engineer's evaluations of the Work and of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Engineer has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Engineer 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.

§ 10.8 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.

(Paragraph deleted)

ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Engineer of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Engineer has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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, which the Contractor, by the Contract Documents, assumes toward the Owner and

Engineer, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 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.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 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.

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Engineer, or by written Construction Change Directive signed by the Owner and Engineer. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Engineer, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Engineer will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Engineer will prepare a Change Order.

§ 13.3 The Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. 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 Engineer and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Engineer promptly and before conditions are disturbed. 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 (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests,

reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 13.5 Except as permitted in Section 13.1, 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.

§ 13.6 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 associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Engineer in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Engineer determines, justify delay, then the Contract Time may be extended by Change Order 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.

§ 14.6 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 14.5, 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 14.6 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, 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.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum, the Contractor shall submit a schedule of values to the Engineer before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to

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substantiate its accuracy required by the Engineer. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Intentionally deleted.

(Paragraphs deleted)

§ 15.3 Applications for Payment

§ 15.3.1 Each Application for Payment shall include an itemization and be prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Engineer require; and shall reflect retainage if provided for in the Contract Documents. 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.

§ 15.3.2 Intentionally deleted.

§ 15.3.3 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 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 other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner of the Engineer's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluations of the Work and the data in the Application for Payment, that, to the best of the Engineer'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 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 Engineer. However, the issuance of a Certificate for Payment will not be a representation that the Engineer 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.

§ 15.4.3 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer 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 Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, 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.

§ 15.4.4 When either party disputes the Engineer's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 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.

§ 15.5.2 Neither the Owner nor Engineer shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 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.

§ 15.5.4 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.

§ 15.6 Substantial Completion

§ 15.6.1 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. .

§ 15.6.2 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 Engineer 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.

§ 15.6.3 Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Engineer determines that the Work or designated portion thereof is substantially complete, the Engineer will issue a Certificate of Substantial Completion which 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.

§ 15.6.4 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.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 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 Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer'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. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Engineer as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Engineer until all warranties and guarantees have been received and accepted by the Owner.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 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.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or 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 the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 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. 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.

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance 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 Engineer of the condition. 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 in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

(Paragraphs deleted)

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 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 this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement 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- VIII. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.2 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 and 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 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 Contractor's indemnity obligations under Section 9.15.

The Contractor's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Contractor's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.3 Automobile Liability insurance covering vehicles owned by the Contractor and hired and non-owned vehicles used by the Contractor, its employees, and agents 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 Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.4 Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.5 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 Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.6 Commercial Umbrella/Excess Liability Insurance with limits of 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. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections

17.1.2, 17.1.3, and 17.1.5 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 Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The coverage required in this section shall be maintained for at least five (5) years following termination of the Contract.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The coverage required in this section shall be maintained for at least five (5) years following termination of the Contract.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 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 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 period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy. The Owner's acceptance of the Contractor's certificate(s) of insurance does not relieve any of the Contractor's responsibilities under the Contract and shall not constitute a waiver of the Contractor's obligation to provide insurance as required by this Contract. The Owner has the right to receive copies of any of the Contractor's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ 17.1.11 The Contractor shall disclose to the Owner in writing any large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Contractor, 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.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 (including without limitation Commercial General Liability and Commercial Umbrella/Excess Liability coverage) to include (1) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. Notwithstanding the foregoing, the Contractor shall NOT include the Owner as an additional insured on any policy required by Sections 17.1.7, 17.1.18, or 17.1.9 to the extent that such policies include any so-called "insured-versus-insured" exclusion. 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. 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 Contractors' services, Work, or conduct. The Contractor shall require all of its subcontractors to include the Owner as an additional insured, upon terms substantially identical to those stated above, on the subcontractors' Commercial General Liability coverage.

§ 17.1.13 The Contractor (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 Contractor's 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 this Section 17.1, the Contractor shall provide written notice to the Owner of such impending or actual cancellation or

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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.

§ 17.1.14

(Paragraph deleted)

Among other grounds to withhold payment, the Contractor's failure to fully comply with all insurance requirements in this Section 17.1 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Contractor. The Owner has the right, but not necessarily the obligation, to declare the Contractor's failure to fully comply with the insurance requirements in this Section 17.1 a material breach of the Contractor's obligations under this Contract.

§ 17.1.15

All of the coverage limits stated in this Section 17.1 are minimum insurance limits and shall not be construed in any way to limit the liability of the Contractor.

§ 17.1.16

The Contractor's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

§ 17.1.17

The Contractor must require that its subcontractors meet or exceed the minimum insurance requirements in this Contract.

(Table deleted)

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 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 Contractor shall not include, and shall not charge Owner for, any builder's risk coverage for all or any part of the Project.

(Table deleted)

(Paragraphs deleted)

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor 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:

Payment Bond in an amount not less than 100% of the Contract Sum 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.

Performance Bond In an amount not less than 100% of the Contract Sum.

§ 17.3.2 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.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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 Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an 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.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 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.

§ 18.5 Upon completion of any Work under or pursuant to this Article 18, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Article 18 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that 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. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 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 regarding to its choice of law rules.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. 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 Engineer timely notice of when and where tests and inspections are to be made so that the Engineer 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.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Superintendent of Schools
Elm Creek Public Schools
230 E. Calkins Ave.
Elm Creek, NE 68836
(308) 856-4300

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

Chane McDowell

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/

Contract Division Manager/Estimator
Anderson Bros. Electric, Plumbing & Heating, Inc.
2600 Hwy 30 E Rovar Park #8
Kearney, NE 68847
Office: (308) 236-6437
Cell: (308) 627-1901
chane_mcdowell@andersonbros.com

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

§ 19.7 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of Nebraska and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- .4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents; and
- .6 that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§19.8 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 carry photo identification;
- .2 not smoke or otherwise use tobacco;
- .3 not use, or be under the influence of, alcohol or drugs;
- .4 not carry a firearm or other weapon; and
- .5 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.

§ 19.9 The Contractor 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 Contractor 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 Contractor and all Subcontractors, if any, also shall adhere to all Owner'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

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comply with this provision may be considered a material breach. The Owner may suspend or terminate the Contractor, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

§ 19.10 The Contractor shall maintain fair labor standards throughout the performance of this Contract. The Contractor shall file with the Owner a statement that the Contractor 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 Contractor 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 Contractor.

§ 19.11 The Contractor 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.

§ 19.12 The Contractor 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 Contractor employs or contracts with any Subcontractor or other service provider in connection with this Agreement, the Contractor shall include a provision in the contract requiring the Subcontractor or other service provider to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

§ 19.13 The failure of either party to exercise any of its rights under this Agreement for a breach or violation thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach or violation.

§ 19.14 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.

§ 19.15 The Contractor 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.

§ 19.16 The Contractor 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.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Engineer fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Engineer, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum is less than all costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract. If the unpaid balance of the Contract Sum is greater than all costs of finishing the Work, including compensation for the services and expenses of the Engineer made necessary thereby, the Contractor shall receive payment for Work properly performed by the Contractor for which payment was not made previously; any excess amounts shall be retained by the Owner.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of

(Paragraphs deleted)

Subcontracts. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits on Work not executed. 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 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Engineer but excluding those arising under Section 16.2, shall be referred initially to the Engineer for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Engineer or 30 days after submission of the matter to the Engineer, be subject to dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 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 18.2, shall be initiated by notice to the Engineer 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.

§ 21.2.2 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 18.2, shall be initiated by notice to the other party.

§ 21.3 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 in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, 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 or more than ten (10) years beyond the time of the act giving rise to the cause of action, whichever is later. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

(Paragraphs deleted)

§ 21.9 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

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

OWNER *(Signature)*

Tom Moore, Superintendent of Schools
Elm Creek Public Schools
(Printed name and title)

CONTRACTOR *(Signature)*

Kenneth J. Muchmore, President
Anderson Bros. Electric, Plumbing & Heating, Inc.
(Printed name and title)



Additions and Deletions Report for **AIA® Document A104® – 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 16:47:52 ET on 05/30/2024.

PAGE 1

AGREEMENT made as of the 3rd day of June in the year 2024

...

(Name, legal status, address and other information)

Elm Creek Public Schools, legally known as
Buffalo County School District 10-0009
230 E. Calkins Ave.
Elm Creek, NE 68836
Attn: Superintendent
(308) 856-4300

...

Anderson Bros. Electric, Plumbing & Heating, Inc.
2600 Hwy 30 E Rovar Park #8
Kearney, NE 68847

...

Boiler Replacement Project
Elm Creek Public Schools
230 E. Calkins Ave.
Elm Creek, NE 68836

The ~~Architect:~~Engineer:

...

Engineering Technologies Inc.
825 M St., Suite 200
Lincoln, NE 68508
Attn: Derek Kotschwar, PE
(402) 476-1273
dkotschwar@eti-engineers.com

PAGE 2

10 **ARCHITECTENGINEER**

...

The Contractor shall execute the Work described in the Contract Documents listed in Article 6 of this Agreement or reasonably inferable by the Contractor from the Contract Documents as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

...

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

PAGE 3

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check the appropriate box and complete the necessary information.) Work by the following date:

- Not later than () calendar days from the date of commencement of the Work.
- By the following date: November 15, 2024

...

<u>Installation of All Coils</u>	<u>August 2, 2024</u>
<u>Heating Operable</u>	<u>October 15, 2024</u>

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that the Owner has entered into, or will enter into, binding agreements demising all or part of the premises where the Work is to be completed based upon the Contractor's achieving Substantial Completion of the Work within the Contract Time including without limitations its obligations to provide classrooms for students. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- Stipulated Sum, in accordance with Section 3.2 below
- Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be (\$ —), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.2.2 Unit prices, if any:

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

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

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

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

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's proper performance of the Contract and completion of the Work. The Contract Sum, including without limitation general conditions and the Contractor's overhead and profit, shall be a lump sum in the amount of Three Hundred Seventy-Five Thousand Four Hundred Ten Dollars (\$375,410.00).

~~§ 3.3 Cost of the Work Plus Contractor's Fee~~

~~§ 3.3.1~~ The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work. ~~§ 3.2~~ Intentionally deleted.

~~§ 3.3~~ Intentionally deleted.

~~§ 3.3.2~~ The Contractor's Fee: ~~§ 3.4~~ Intentionally deleted.

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.) ~~§ 3.5~~ Intentionally deleted.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

~~§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price~~

~~§ 3.4.1~~ The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

~~§ 3.4.2~~ The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

~~§ 3.4.3~~ **Guaranteed Maximum Price**

~~§ 3.4.3.1~~ The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.) ~~§ 4.1.1~~ Based upon Applications for Payment (including all supporting documentation) submitted to the Owner and Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Nebraska:

~~§ 3.4.3.2~~ The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.3 Unit Prices, if any:

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

(i) A current Sworn Statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the application for payment, and the amount to be

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

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.) paid to the Contractor from such progress payment.

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

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

~~§ 3.4.3.6 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.~~

~~§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.~~

§ 3.5 Liquidated damages, if any:

~~(Insert terms and conditions for liquidated damages, if any.)~~ (ii) Commencing with the second (2nd) Application for Payment submitted by the Contractor, sworn statements from all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors, demonstrating receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment.

ARTICLE 4 — PAYMENT

§ 4.1 Progress Payments

~~§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.~~ (iii) Such other information, documentation, and materials as the Owner, the Engineer, or the title insurer may require.

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

~~§ 4.1.3~~ § 4.1.3 Payments are due and payable thirty (30) days following the Contractor's presentation to the Owner of an Application for Payment that is approved and signed by the Engineer, provided that such Engineer-approved Application for Payment is received by the Architect not later than the ~~day of a month~~, the Owner shall make payment of the certified amount to the Contractor not later than the ~~day of the month~~. If an Application for Payment is received by the Architect after the date fixed above, payment 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.)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 that actually occurs after the Engineer-approved Application for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows: 10%.
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

§ 4.1.5 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.)

~~—%~~ —% 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 or (ii) any other right or remedy that the Owner has under the Contract Documents, at law, or in equity.

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.3 a final Certificate for Payment has been issued by the ~~Architect~~ Engineer in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:
is due and payable thirty (30) days following the Owner's receipt from Engineer of the final Certificate for Payment, provided that such Engineer-approved 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 finally payment not made within twenty (20) days following the next regularly scheduled meeting that actually occurs after the Engineer-approved Certificate for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

PAGE 5

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

Arbitration pursuant to Section 21.6 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. 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-Engineer~~. 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 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, or between the contract Documents and applicable standards, codes, and ordinances, 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 Engineer's interpretation. The terms and conditions of this Section 7.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 9.1 and 9.6.

...

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-Engineer~~ and the ~~Architect's-Engineer'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.

§ 7.5

Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The ~~Architect-Engineer~~ and the ~~Architect's-Engineer's~~ consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including ~~copyrights~~. copyrights, except as otherwise provided in any agreement between the Owner and the Engineer. 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-Engineer's~~ or Engineer's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, 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 this Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect-Engineer~~ and the ~~Architect's-Engineer's~~ consultants.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital ~~data~~. data unless agreed otherwise in writing.

§ 7.7 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. Intentionally deleted.

...

§ 7.9.1 Except as otherwise provided in Section 7.9.2, 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 in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below: by email

to the Owner at: Elm Creek Public Schools
Attn: Superintendent
230 E. Calkins Ave.
Elm Creek, NE 68836

with a copy to: Coady H. Pruett, Owner's Legal Counsel
KSB School Law, PC, LLO
206 S. 13th St., Suite 1100
Lincoln, NE 68508

(If other than in accordance with AIA Document E203-2013, 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.) to the Contractor at: Anderson Bros. Electric, Plumbing & Heating, Inc.

Attn: President
2600 Hwy 30 E Rovar Park #8
Kearney, NE 68847

and to the Engineer at: Engineering Technologies Inc.
Attn: Derek Kotschwar
825 M St., Suite 200
Lincoln, NE 68508

...

~~Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect-Engineer and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.~~

PAGE 8

§ 8.1.1 ~~Prior to commencement of the Work, at the 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 8.1.1, the Contract Time shall be extended appropriately.~~ Intentionally deleted.

...

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 any 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-Engineer.~~ The Engineer may, pursuant to Section 15.4.3, 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 the Owner's expenses and compensation for the ~~Architect's~~ Engineer's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the

actions of the Owner or the ~~Architect, Engineer,~~ or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

§ 8.4 Extent of the Owner Rights

§ 8.4.1 The rights stated in this Article 8 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.

§ 8.4.2 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.

...

§ 9.1.1 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 shall have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 17.2.1, 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 9.1.1.

§ 9.1.2 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 8.1.2, 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-Engineer~~ any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Engineer~~ 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. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Engineer, or the work installed by other contractors, is not guaranteed by the Engineer or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner

§ 9.1.3 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-Engineer~~ any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Engineer~~ may require.

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§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the ~~Architect-Engineer~~ and in accordance with a Modification.

...

The Contractor warrants to the Owner and ~~Architect-Engineer~~ 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 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 under normal usage. ~~All other 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 15.6.3.~~ The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

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~~The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~ Owner is a tax-exempt entity under state and/or federal law. Owner will provide Contractor with tax-exempt status documentation upon request.

...

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

...

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.expenses.

...

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and ~~Architect's~~ Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedule submitted to the Owner and ~~Architect-Engineer~~.

...

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the ~~Architect-Engineer~~ Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the ~~Architect-Engineer~~ Engineer reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and ~~Architect-Engineer~~ Engineer 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. The Work shall be in accordance with approved submittals.

...

§ 9.9.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the ~~Architect-Engineer~~ will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The ~~Architect-Engineer~~ will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The ~~Architect's-Engineer's~~ review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the ~~Architect-Engineer~~ will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

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The Contractor shall provide the Owner and ~~Architect-Engineer~~ with access to the Work in preparation and progress wherever located.

...

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-Engineer~~ 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-Engineer~~. 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-Engineer~~.

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§ 9.15.1 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, defend, indemnify, and hold harmless the Owner, Engineer, Engineer's consultants, and its officers, board members, consultants, agents, employees and representatives of any of them (collectively, the "Indemnitees") from and against any and all claims, demands, damages, losses, expenses, lawsuits, actions, cross-claims, counterclaims, third-party actions, liens, damages, debts, obligations, exemplary damages, consequential damages, punitive damages, liabilities, judgments, and causes of action, 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 fees and expenses, that arise out of, are related to, or are in connection with the Contract, the Work, the Contractor's performance hereunder, and/or the Contractor's conduct at or related to the Work or the Owner's property (hereinafter "Indemnity Claims"), provided that any such Indemnity Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of the same, but only to the extent caused by the intentional, reckless, or 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. liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1. Notwithstanding the foregoing, the Contractor's obligations in this section 9.15.1 specifically except any obligation to hold harmless, defend, or indemnify the Indemnitees against any Indemnity Claim solely caused by the Owner's own negligent or reckless conduct.~~

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ARTICLE 10 — ARCHITECT

ARTICLE 10 ENGINEER

§ 10.1 The ~~Architect-Engineer~~ 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-Engineer~~ issues the final Certificate

for Payment. The ~~Architect-Engineer~~ will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

~~§ 10.2 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.~~
~~Intentionally deleted.~~

§ 10.3 The ~~Architect-Engineer~~ will visit the site at intervals appropriate to the stage of the construction 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-Engineer~~ will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect-Engineer~~ will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the ~~Architect-Engineer~~ 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-Engineer~~ will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect-Engineer~~ 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.

§ 10.5 Based on the ~~Architect's-Engineer's~~ evaluations of the Work and of the Contractor's Applications for Payment, the ~~Architect-Engineer~~ will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The ~~Architect-Engineer~~ has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The ~~Architect-Engineer~~ 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.

§ 10.8 The ~~Architect-Engineer~~ 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 will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.~~

§ 10.9 The ~~Architect's~~ decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

...

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect-Engineer~~ of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or ~~Architect-Engineer~~ has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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, which the Contractor, by the Contract Documents, assumes toward the Owner and ~~Architect, Engineer,~~ and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 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.

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§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and ~~Architect, Engineer,~~ or by written Construction Change Directive signed by the Owner and ~~Architect, Engineer.~~ Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and ~~Architect, Engineer,~~ by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The ~~Architect, Engineer~~ will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the ~~Architect, Engineer~~ will prepare a Change Order.

§ 13.3 The ~~Architect, Engineer~~ will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. 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, Engineer~~ and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and ~~Architect, Engineer~~ promptly and before conditions are disturbed. 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 (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 13.5 Except as permitted in Section 13.1, 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.

§ 13.6 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 associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

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§ 14.4 The date of Substantial Completion is the date certified by the Architect-Engineer in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect-Engineer determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21. may be extended by Change Order 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.

§ 14.6 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 14.5, 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 14.6 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, 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.

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§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Sum, the Contractor shall submit a schedule of values to the Architect-Engineer before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price 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-Engineer. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate Intentionally deleted.

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;

- ~~2~~ — a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- ~~3~~ — a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- ~~4~~ — a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- ~~5~~ — a list of any contingency amounts included in the Control Estimate for further development of design and construction.

~~§ 15.2.3~~ When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

~~§ 15.2.4~~ The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

~~§ 15.2.5~~ The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

~~§ 15.3.1~~ At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment. Each Application for Payment shall include an itemization and be prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; Engineer require; and shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Documents. 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.

~~§ 15.3.2~~ With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee. Intentionally deleted.

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~~§ 15.4.1~~ The ~~Architect~~ Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the ~~Architect~~ Engineer determines is properly due, or notify the Contractor and Owner of the ~~Architect's~~ Engineer's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

~~§ 15.4.2~~ The issuance of a Certificate for Payment will constitute a representation by the ~~Architect~~ Engineer to the Owner, based on the ~~Architect's~~ Engineer's evaluations of the Work and the data in the Application for Payment, that, to the best of the ~~Architect's~~ Engineer'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 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-Engineer~~. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect-Engineer~~ 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.

§ 15.4.3 The ~~Architect-Engineer~~ 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-Engineer's~~ opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the ~~Architect-Engineer~~ is unable to certify payment in the amount of the Application, the ~~Architect-Engineer~~ will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the ~~Architect-Engineer~~ cannot agree on a revised amount, the ~~Architect-Engineer~~ will promptly issue a Certificate for Payment for the amount for which the ~~Architect-Engineer~~ is able to make such representations to the Owner. The ~~Architect-Engineer~~ 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-Engineer's~~ opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

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§ 15.4.4 When either party disputes the ~~Architect's-Engineer's~~ decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

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§ 15.5.2 Neither the Owner nor ~~Architect-Engineer~~ shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

...

§ 15.6.1 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.

§ 15.6.2 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-Engineer~~ 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.

§ 15.6.3 Upon receipt of the Contractor's list, the ~~Architect-Engineer~~ will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ~~Architect-Engineer~~ determines that the Work or designated portion thereof is substantially complete, the ~~Architect-Engineer~~ will issue a Certificate of Substantial Completion which 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.

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§ 15.7.1 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-Engineer~~ will promptly make such inspection and, when the ~~Architect-Engineer~~ finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect-Engineer~~ will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's-Engineer's~~ knowledge, information and belief, and on the basis of the ~~Architect's-Engineer'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 stated in Section 15.7.2 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 Engineer as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Engineer until all warranties and guarantees have been received and accepted by the Owner.~~

...

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. ~~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 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 9.15.~~

...

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance 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~~ Engineer of the condition. 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 in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

~~**§ 16.2.2** 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 16.2.1 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.~~

~~**§ 16.2.3** 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 indemnify the Contractor for all cost and expense thereby incurred.~~

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§ 17.1.1 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 this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located; and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- VIII. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$) each occurrence, (\$) general aggregate, and (\$) 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 for claims including no less broad than the ISO CG 00 01 coverage form and for claims including, without limitation,

...

.5 the Contractor's indemnity obligations under Section 9.15.

The Contractor's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Contractor's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.3 Automobile Liability insurance covering vehicles owned by the Contractor and hired and non-owned vehicles used by the Contractor, its employees, and agents 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 Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.4 ~~The Contractor 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 those required under Section 17.1.2 and 17.1.3, 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.~~ Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.5 ~~Workers' Compensation at statutory limits.~~ 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 Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.6 ~~Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.~~ Commercial Umbrella/Excess Liability Insurance with limits of 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. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections 17.1.2, 17.1.3, and 17.1.5 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 Contractor waives subrogation in favor of the Owner; and further the Contractor shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~(\$) per claim and (\$) in the aggregate.~~ One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The coverage required in this section shall be maintained for at least five (5) years following termination of the Contract.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~(\$) per claim and (\$) in the aggregate.~~ One

Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The coverage required in this section shall be maintained for at least five (5) years following termination of the Contract.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~(\$) per claim and (\$) One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.~~

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 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 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 period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy. The Owner's acceptance of the Contractor's certificate(s) of insurance does not relieve any of the Contractor's responsibilities under the Contract and shall not constitute a waiver of the Contractor's obligation to provide insurance as required by this Contract. The Owner has the right to receive copies of any of the Contractor's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ 17.1.11 The Contractor shall disclose to the Owner in writing any large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Contractor, 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.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 ~~to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds (including without limitation Commercial General Liability and Commercial Umbrella/Excess Liability coverage) to include (1) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. Notwithstanding the foregoing, the Contractor shall NOT include the Owner as an additional insured on any policy required by Sections 17.1.7, 17.1.18, or 17.1.9 to the extent that such policies include any so-called "insured-versus-insured" exclusion. 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 04.04. 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 Contractors' services, Work, or conduct. The Contractor shall require all of its subcontractors to include the Owner as an additional insured, upon terms substantially identical to those stated above, on the subcontractors' Commercial General Liability coverage.~~

§ 17.1.13 The Contractor (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 Contractor's 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 this Section 17.1, the Contractor shall provide written 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.

§ 17.1.14 Other Insurance Provided by the Contractor

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

Among other grounds to withhold payment, the Contractor's failure to fully comply with all insurance requirements in this Section 17.1 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Contractor. The Owner has the right, but not necessarily the obligation, to declare the Contractor's failure to fully comply with the insurance requirements in this Section 17.1 a material breach of the Contractor's obligations under this Contract.

§ 17.1.15

All of the coverage limits stated in this Section 17.1 are minimum insurance limits and shall not be construed in any way to limit the liability of the Contractor.

§ 17.1.16

The Contractor's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

§ 17.1.17

The Contractor must require that its subcontractors meet or exceed the minimum insurance requirements in this Contract.

Coverage

Limits

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§ 17.2.2.1 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 or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, 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, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. Contractor shall not include, and shall not charge Owner for, any builder's risk coverage for all or any part of the Project.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 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 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 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 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, 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.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 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 this 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 17.2.2.7 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.

§ 17.2.2.7.2 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 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner’s property insurance 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. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

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

Coverage

Limits

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract. Contractor 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:

Payment Bond in an amount not less than 100% of the Contract Sum 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.

Performance Bond In an amount not less than 100% of the Contract Sum.

...

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect-Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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-Engineer’s services and expenses made necessary thereby, shall be at the Contractor’s expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work-expense.

§ 18.2 In addition to the Contractor’s obligations under Section 9.4, if, within one year after the date of Substantial Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an 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.

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§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18. Upon completion of any Work under or pursuant to this Article 18, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Article 18 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 21.6. All aspects of the Contract shall be governed by, and construed in accordance with, the internal laws of the State of Nebraska, without regarding to its choice of law rules.

...

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. 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-Engineer timely notice of when and where tests and inspections are to be made so that the Architect-Engineer 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.

...

Superintendent of Schools
Elm Creek Public Schools
230 E. Calkins Ave.
Elm Creek, NE 68836
(308) 856-4300

...

Chane McDowell
Contract Division Manager/Estimator
Anderson Bros. Electric, Plumbing & Heating, Inc.
2600 Hwy 30 E Rovar Park #8
Kearney, NE 68847
Office: (308) 236-6437
Cell: (308) 627-1901
chane_mcdowell@andersonbros.com

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§ 19.7 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of Nebraska and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- .4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents; and
- .6 that it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§19.8 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 carry photo identification;
- .2 not smoke or otherwise use tobacco;
- .3 not use, or be under the influence of, alcohol or drugs;
- .4 not carry a firearm or other weapon; and
- .5 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.

§ 19.9 The Contractor 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 Contractor 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 Contractor and all Subcontractors, if any, also shall adhere to all Owner'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 Owner may suspend or terminate the Contractor, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

§ 19.10 The Contractor shall maintain fair labor standards throughout the performance of this Contract. The Contractor shall file with the Owner a statement that the Contractor 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 Contractor 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 Contractor.

§ 19.11 The Contractor 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.

§ 19.12 The Contractor 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 Contractor employs or contracts with any Subcontractor or other service provider in connection with this Agreement, the Contractor shall include a provision in the contract requiring the Subcontractor or other service provider to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

§ 19.13 The failure of either party to exercise any of its rights under this Agreement for a breach or violation thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach or violation.

§ 19.14 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.

§ 19.15 The Contractor 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.

§ 19.16 The Contractor 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.

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If the ~~Architect-Engineer~~ fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the ~~Architect, Engineer~~, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, ~~upon certification by the Architect that sufficient cause exists to justify such action,~~ may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

...

§ 20.2.4 If the unpaid balance of the Contract Sum ~~exceeds~~ is less than all costs of finishing the Work, including compensation for the Architect's-Engineer's 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 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract. ~~the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract. If the unpaid balance of the Contact Sum is greater than all costs of finishing the Work, including compensation for the services and expenses of the Engineer made necessary thereby, the Contractor shall receive payment for Work properly performed by the Contractor for which payment was not made previously; any excess amounts shall be retained by the Owner.~~

...

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

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

Subcontracts. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits on Work not executed. 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.

...

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the ~~Architect-Engineer~~ but excluding those arising under Section 16.2, shall be referred initially to the ~~Architect-Engineer~~ for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the ~~Architect-Engineer~~ or 30 days after submission of the matter to the ~~Architect~~, be subject to mediation as a condition precedent to ~~binding-Engineer~~, be subject to dispute resolution.

...

§ 21.2.1 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 18.2, shall be initiated by notice to the ~~Architect-Engineer~~ 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.

...

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, 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-Work or more than ten~~ (10) years beyond the time of the act giving rise to the cause of action, whichever is later. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 ~~If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

§ 21.5 ~~The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution 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, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 21.6 ~~If the parties have selected arbitration as the method for binding dispute resolution in this 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 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.~~

~~§ 21.7~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, 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).

~~§ 21.8~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration 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 a Claim not described in the written Consent.

~~§ 21.9~~ **The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.** **Continuing Contract Performance**

~~Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.~~

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

~~OWNER (Signature)~~

~~Tom Moore, Superintendent of Schools
Elm Creek Public Schools
(Printed name and title)~~

~~OWNER (Signature)~~

~~(Printed name and title)~~

~~CONTRACTOR (Signature)~~

~~Kenneth J. Muchmore, President
Anderson Bros. Electric, Plumbing & Heating, Inc.
(Printed name and title)~~

~~CONTRACTOR (Signature)~~

~~(Printed name and title)~~

~~§ 21.10~~ **Continuing Contract Performance**

~~Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.~~

~~§ 21.11~~ **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.~~

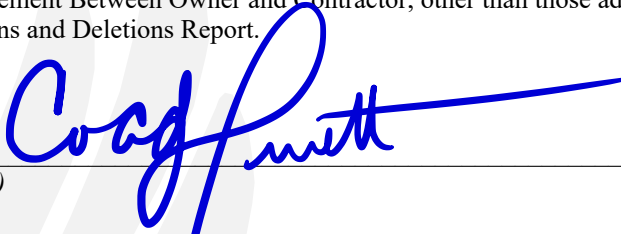
~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Coady H. Pruett, 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 16:47:52 ET on 05/30/2024 under Order No. 4104251597 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

OWNER'S LEGAL COUNSEL

(Title)

MAY 30, 2024

(Dated)