

Bixby Board of Education Regular Meeting  
Thursday, March 10, 2022 Bixby Board of Education Regular Meeting  
Administrative Center 109 N. Armstrong Bixby, OK 74008  
109 N Armstrong St  
Bixby, OK 74008

Attendance Taken at 6:00 PM.

Justin Cheatham: Present

Matt Dotson: Present

Tristy Fryer: Present

Julie Prox: Present

Amanda Stephens: Present

Present: 5.

**1. Call Meeting to Order/Roll Call**

1.1. Pledge of allegiance led by West Intermediate students Paislee and Braden St. Romain.

**2. Comments from the Public**

2.1. Speakers must identify themselves.

2.2. Each Speaker is given a maximum of three (3) minutes.

2.3. In order to avoid repetitious information, a single spokesperson will be selected by groups desiring to address the board.

2.4. Total time allocated to this item is thirty (30) minutes.

2.5. Speakers may offer objective comments of school operations and programs that concern them. The Board shall not hear personal complaints unless the proper administrative procedures concerning complaints have been followed.

2.6. Speakers may not use profanity at a School Board meeting. Patrons conducting themselves in this manner may be asked to leave the meeting.

2.7. The president reserves the right to interrupt this section and move to the next item.

2.8. In accordance with provisions of the Oklahoma Open Meeting Act, discussion or action by the Board on an item presented under the "Comments from the Public" agenda topic is not permitted. Board members and administrative staff will not respond to questions from the public. The Board appreciates and will seriously consider all comments made during this time. Proper questions from members of the public may be referred to the Superintendent for later report to the Board.

**3. Reports to The Board**

### 3.1. Special Recognition

3.1.1. Spartan Spirit Award - Nikki Jolly

3.1.2. Spartan Coin of Excellence

- BHS Wrestling Academic State Champions / Individual State Champions
- Senior BHS Dance members
- Academic All-State Recipients - Landen Plumlee and Lauren Hsieh

3.2. Superintendent's Report - Assoc. Supt. Lydia Wilson

- Update on HS Academic Building Planning - KKT

3.3. Teaching and Learning Report - Cheryl Wilkinson

3.4. Facilities and Operations Update - Gabe Hayes

3.5. Financial Operations Report - Mike Anthony

4. **General Consent Agenda - Discussion, consideration and vote to approve or not to approve Items #1-11. (These items may be approved by one Board motion, unless any board member desires to have a separate vote on any or all of these items.)**

Approval of General Consent agenda Items #1-11 as presented Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin  
Cheatham: Yea

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie Prox: Yea

Amanda  
Stephens: Yea

Yea: 5, Nay: 0

4.1. Minutes of February 10, 2022 Regularly Scheduled Board Meeting

4.2. Minutes of February 16, 2022 Special Board Meeting

4.3. Activity Fund Summary of Accounts and Transfer Requests

4.4. Encumbrances and Change Orders for FY 2022 General Fund, Building Fund, Child Nutrition Fund, Sinking Fund, and Bond Funds 31-39 per attached encumbrance registers

4.5. Discussion, consideration and vote to approve or not to approve a Memorandum of Understanding for Public Assistance with Tulsa City-County Health Department for the 2022-2023 fiscal year.

4.6. Approval of an agreement with Facilitron, Inc. for Facilities Management Portal usage for the 2022-2023 fiscal year

4.7. FMLA - Certified - Middle School - 3/22/22 TO 4/22/22

4.8. Medical Leave - Support - West Intermediate - 1/18/22 - 3/21/22

4.9. Medical Leave - Support - West Elementary - 2/28/22 - 3/11/22

4.10. Employment, Resignation, Retirement - Certified Personnel - per attached

4.11. Employment, Resignation, Retirement - Support Personnel - per attached

## 5. **Finance**

5.1. Board to consider and take possible action, in the absence of the President and/or Clerk, to appoint an acting President and/or acting Clerk for the School District to execute any and all documents pertaining to setting the maturities, date, time and place of the bond sale

All members were present, this item was not needed. Tabled. Passed with a motion by Amanda Stephens and a second by Matt Dotson.

Justin  
Cheatha Yea  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen  
s: Yea

Yea: 5, Nay: 0

- 5.2. Board to consider and take action on a resolution determining the maturities of, and setting a date, time and place for the sale of the \$21,000,000 General Obligation Combined Purpose Bonds of this School District, and designating Phillips Murrah P.C., as bond counsel for this issuance of bonds.

Approval of the maturities of, and setting a Special Board Meeting on April 13, 2022 at Noon at the Bixby Schools Administrative Center, 109 N. Armstrong, Bixby, Ok for the sale of the \$21,000,000 General Obligation Combined Purpose Bonds of this School District, and designating Phillips Murrah P.C., as bond counsel for this issuance of bonds. Passed with a motion by Julie Prox and a second by Amanda Stephens.

Justin  
Cheatha  
m: Yea

Matt  
Dotson: Yea

Tristy Fryer: Yea

Julie Prox: Yea

Amanda Stephens: Yea

Yea: 5, Nay: 0

5.3. Discussion, consideration and vote to approve or not to approve an agreement with the Bixby Swim Club for use of the BPS pool for the 2022-2023 fiscal year.

Approval of an agreement with the Bixby Swim Club for use of the BPS pool for the 2022-2023 fiscal year at a cost of \$750 per month. Passed with a motion by Amanda Stephens and a second by Justin Cheatham.

Justin Cheatham: Yea

Matt Dotson: Yea

Tristy Fryer: Yea

Julie Prox: Yea

Amanda: Yea

Stephen  
s:

Yea: 5, Nay: 0

## 6. Teaching and Learning

6.1. Discussion, consideration and vote to approve or not to approve an agreement with Educators Handbook.com for the 2022-2023 fiscal year at a cost of \$10,967.

Approval of an agreement with Educators Handbook.com for the 2022-2023 fiscal year at a cost of \$10,967. Passed with a motion by Julie Prox and a second by Tristy Fryer.

Justin  
Cheatha Yea  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen Yea  
s:

Yea: 5, Nay: 0

6.2. Discussion, consideration and vote to approve or not to approve an agreement with Common Goal Systems Inc. for the 2022-2023 fiscal year at a cost of \$23,090.36.

Approval of an agreement with Common Goal Systems Inc. for the 2022-2023 fiscal year at a cost of \$23,090.36. Passed with a motion by Matt Dotson and a second by Julie Prox.

Justin  
Cheatha Ye  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen Ye  
s:

Yea: 5, Nay: 0

## 7. Operations

7.1. Discussion, consideration and vote to approve or not approve an AIA Master Agreement with CMSWillowbrook, Inc. for construction management services for the Bixby West Expansion project.

Approval of an AIA Master Agreement with CMSWillowbrook, Inc. for construction management services for the Bixby West Expansion project. Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin  
Cheatha Ye  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen Yea  
s:

Yea: 5, Nay: 0

7.2. Discussion, consideration, and vote to approve or not to approve an annual contract with Apptegy for "Rooms" messaging services for the fiscal year 2022-23 at a cost of \$27,500.

Approval of an annual contract with Apptegy for "Rooms" messaging services for the fiscal year 2022-23 at a cost of \$27,500. Passed with a motion by Tristy Fryer and a second by Amanda Stephens.

Justin  
Cheatha Yea  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen Yea  
s:

Yea: 5, Nay: 0

7.3. Discussion, consideration and vote to approve or not to approve an agreement with Commerce Bank to provide AP/Virtual Card Solutions to automate a portion of our traditional check payments.

Approval of agreement with Commerce Bank to provide AP/Virtual Card Solutions to automate a portion of our traditional check payments. Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin  
Cheatha Yea  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen Yea  
s:

Yea: 5, Nay: 0

7.4. Discussion, consideration and vote to approve or not to approve declaring items as surplus to be disposed of in accordance to Oklahoma Statutes.

Approval of declaring items as surplus to be disposed of in accordance to Oklahoma Statutes. Passed with a motion by Amanda Stephens and a second by Justin Cheatham.

Justin  
Cheatha Yea  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amand  
a  
Stephen Yea  
s:

Yea: 5, Nay: 0

## 8. **Human Resources**

8.1. Discussion, consideration and vote to approve or not to approve the Holiday Schedule for all 12-month employees for the 2022-2023 fiscal year.

Approval of the Holiday Schedule for all 12-month employees for the 2022-2023 fiscal year. Passed with a motion by Tristy Fryer and a second by Julie Prox.

Justin  
Cheatha Yea  
m:

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amanda  
Stephens: Yea

Yea: 5, Nay: 0

8.2. Discussion, consideration, and vote to approve or not to approve support pay scales for 2021-22 fiscal year.

Approval of the support pay scales for 2021-22 fiscal year as presented. Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin  
Cheatha: Yea

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie  
Prox: Yea

Amanda  
Stephens: Yea

Yea: 5, Nay: 0

8.3. Discussion, consideration and vote to approve or not to approve any resignations submitted after the agenda was posted.

**9. New Business**

**10. Vote to adjourn**

At 7:40 p.m. approval to adjourn. Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin  
Cheatham: Yea

Matt  
Dotson: Yea

Tristy  
Fryer: Yea

Julie Prox: Yea

Amanda  
Stephens: Yea

Yea: 5, Nay: 0

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President

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Vice President

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Clerk

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Member

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Member

Bixby Board of Education Regular Meeting  
Thursday, February 10, 2022, 6:00 p.m.  
Administrative Center  
109 N Armstrong St  
Bixby, OK 74008

Attendance Taken at 6:00 PM.

Justin Cheatham: Present  
Matt Dotson: Absent  
Tristy Fryer: Present  
Julie Prox: Present  
Amanda Stephens: Present  
Present: 4, Absent: 1.

## **1. Call Meeting to Order/Roll Call**

1.1. Pledge of Allegiance led by Central Elementary students Remi Park, Tahlia Ethridge and Paisley Delay.

## **2. Comments from the Public**

2.1. Speakers must identify themselves.

2.2. Each Speaker is given a maximum of three (3) minutes.

2.3. In order to avoid repetitious information, a single spokesperson will be selected by groups desiring to address the board.

2.4. Total time allocated to this item is thirty (30) minutes.

2.5. Speakers may offer objective comments of school operations and programs that concern them. The Board shall not hear personal complaints unless the proper administrative procedures concerning complaints have been followed.

2.6. Speakers may not use profanity at a School Board meeting. Patrons conducting themselves in this manner may be asked to leave the meeting.

2.7. The president reserves the right to interrupt this section and move to the next item.

2.8. In accordance with provisions of the Oklahoma Open Meeting Act, discussion or action by the Board on an item presented under the "Comments from the Public" agenda topic is not permitted. Board members and administrative staff will not respond to questions from the public. The Board appreciates and will seriously consider all comments made during this time. Proper questions from members of the public may be referred to the Superintendent for later report to the Board.

### 3. Reports to The Board

#### 3.1. Special Recognition

##### 3.1.1. Spartan Coin of Excellence

- OCDA JH All-State Choir Members
- Cayden Dawson, Gatorade Oklahoma Female Cross Country Athlete of the Year
- Spartan Football Seniors, Coaches, and Trainers

##### 3.2. Superintendent's Report - Rob Miller

- COVID-19 Update
- Bond Issue Election and next steps
- Proposed Tax Increment Financing (TIF) proposals
- Legislative Update

##### 3.3. Teaching and Learning Report - Cheryl Wilkinson

##### 3.4. Facilities and Operations Update - Gabe Hayes

##### 3.5. Financial Operations Report - Mike Anthony

#### **3.6. General Consent Agenda - Discussion, consideration and vote to approve or not to approve Items #1-11. (These items may be approved by one Board motion, unless any board member desires to have a separate vote on any or all of these items.)**

Approval of the General Consent Agenda Items #1-11 as presented. Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

##### 3.6.1. Minutes of January 13, 2022 Regularly Scheduled Board Meeting

##### 3.6.2. Activity Fund Summary of Accounts and Transfer Requests

##### 3.6.3. Encumbrances and Change Orders for FY 2022 General Fund, Building Fund, Child Nutrition Fund, Sinking Fund, and Bond Funds 31-39 per attached encumbrance registers

##### 3.6.4. Approval of an additional fundraiser for the 9th Grade Center for the 2021-2022 fiscal year

3.6.5. Approval of a contract agreement with Lighthouse Electric, LLC for Security Monitoring Systems for the 2021-2022 and 2022-2023 fiscal years

3.6.6. Approval of agreements with BTC for fiber optic network internet services for Central Elementary, Central Intermediate, North Elementary, North Intermediate, High School, West Elementary and West Intermediate

3.6.7. Medical Leave - Support - North Elementary - 2/28/22 - 5/19/22

3.6.8. FMLA - Certified - North Intermediate - 2/1/22 -2/22/22

3.6.9. Medical Leave - Support - West Elem/Int - 1/5/22 - 4/1/22

3.6.10. Employment, Resignation, Retirement - Certified Personnel - per attached

3.6.11. Employment, Resignation, Retirement - Support Personnel - per attached

#### **4. Finance**

4.1. Discussion, Consideration, and vote to approve or not to approve a collaboration agreement with GO for Public Schools to administer contributions for Qualified Innovative Educational Programs in Bixby Schools.

Approval of a collaboration agreement with GO for Public Schools to administer contributions for Qualified Innovative Educational Programs in Bixby Schools. Passed with a motion by Amanda Stephens and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

4.2. Discussion, consideration and vote to approve or not to approve a contract with Jenkins & Kemper CPA for the 2021-2022 fiscal year audit and 2022-2023 fiscal year.

Approval of a contract with Jenkins & Kemper CPA for the 2021-2022 fiscal year audit and 2022-2023 fiscal year at a cost not to exceed of \$13,700.00. Passed with a motion by Julie Prox and a second by Justin Cheatham.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea

Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

4.3. Discussion, consideration and vote to approve or not to approve a contract with Ross Transportation for the purchase of a 2022 Model: Micro Bird by Girardin, Type-A School Bus, Series: G5, Capacity: 14 Passenger - MFSAB at a cost of \$76,664.00 to be purchased from a Special Education Grant.

Approval of a contract with Ross Transportation for the purchase of a 2022 Model: Micro Bird by Girardin, Type-A School Bus, Series: G5, Capacity: 14 Passenger - MFSAB at a cost of \$76,664.00 to be purchased from a Special Education Grant. Passed with a motion by Tristy Fryer and a second by Amanda Stephens.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

5. **Teaching and Learning** - No items this month.

## 6. Operations

6.1. Discussion, consideration, and vote to approve or not to approve the adoption of Policy 3137, Child Identification, Location, Screening, and Evaluation, Notice to Parents.

Approval of the adoption of Policy 3137, Child Identification, Location, Screening, and Evaluation, Notice to Parents. Passed with a motion by Amanda Stephens and a second by Julie Prox.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.2. Discussion, consideration and vote to approve or not to approve an agreement with Employee Evaluations Systems, Inc. for the McREL and SEES programs for the 2022-2023 fiscal year.

Approval of an agreement with Employee Evaluations Systems, Inc. for the McREL and SEES programs for the 2022-2023 fiscal year. Passed with a motion by Julie Prox and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.3. Discussion, consideration and vote to approve or not to approve a Service agreement with Drillers F & B, LLC and the Bixby Spartan Band for concession workers at ONEOK Field.

Approval of a Service agreement with Drillers F & B, LLC and the Bixby Spartan Band for concession workers at ONEOK Field. Passed with a motion by Amanda Stephens and a second by Justin Cheatham.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.4. Discussion, consideration and vote to approve or not to approve new activity fund accounts for Central Intermediate Art and Central Intermediate Music.

Approval of two new activity fund accounts for Central Intermediate Art and Central Intermediate Music. Passed with a motion by Justin Cheatham and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.5. Discussion, consideration and vote to approve or not to approve an agreement with Lighthouse Electric, LLC for the Fire Alarm Systems for the 2021-2022 and 2022-2023 fiscal years.

Approval of an agreement with Lighthouse Electric, LLC for the Fire Alarm Systems for the 2021-2022 and 2022-2023 fiscal years. Passed with a motion by Julie Prox and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.6. Discussion, consideration and vote to approve or not to approve an agreement with Zendesk for a Technology work order system for the remainder of 2021-2022 and 2022-2023 fiscal years.

Approval of an agreement with Zendesk for a Technology work order system for the remainder of 2021-2022 and 2022-2023 fiscal years at a cost of \$13,871.93. Passed with a motion by Amanda Stephens and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.7. Discussion, consideration and vote to approve or not to approve a contract with BTC for fiber optic network internet services for Middle School and East Elementary/Intermediate.

Approval of a contract with BTC for fiber optic network internet services for Middle School and East Elementary/Intermediate. Passed with a motion by Julie Prox and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea

Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

6.8. Discussion, consideration and vote to approve or not to approve declaring items as surplus to be disposed of according to Oklahoma Statutes.

Approval of declaring items as surplus to be disposed of according to Oklahoma Statutes as presented. Passed with a motion by Amanda Stephens and a second by Justin Cheatham.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

## **7. Human Resources**

7.1. Discussion, consideration and vote to approve or not to approve any resignations submitted after the agenda was posted. None

## **8. New Business**

## **9. Vote to adjourn**

At 8:33 p.m. approval to adjourn. Passed with a motion by Julie Prox and a second by Amanda Stephens.

Justin Cheatham: Yea  
Matt Dotson: Absent  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 4, Nay: 0, Absent: 1

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President

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Vice President

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Clerk

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Member

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Member

**2021-2022**

**CERTIFIED PERSONNEL**

**EMPLOYMENT**

Jessica Laverty	English Teacher	Eff. 01/21/2022 9th Grade Center
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**TEMPORARY CONTRACT**

Ron Acebo	Virtual Teacher
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**VIRTUAL COURSE TEACHER**

**RESIGNATION AGREEMENTS**

Melody Hale	2nd Grade	Eff. 05/23/2022 Central Elementary
Jessica Lawrence	Science Teacher	Eff. 01/14/2022 High School
Valerie Naiman	Science Teacher	Eff. 05/23/2022 Middle School
Mark Zumpano	English Teacher	Eff. 05/20/2022 Middle School

## SUPPORT PERSONNEL

### EMPLOYMENT FOR THE 2021-2022 SCHOOL YEAR

SUBJECT TO JOB ASSIGNMENT BY THE SUPERINTENDENT

Whitney Crow	Paraprofessional	Eff. 01/20/2022 High School
Acacia Ford	FS Assistant	Eff. 02/07/2022 North Elementary
Levi Keim	Paraprofessional	Eff. 01/20/2022 High School
Linda Lainhart	FS Assistant	Eff. 01/31/2022 East Elementary
Wilson Mace	Bus Driver	Eff. 01/11/2022 District Wide
Elia Munoz	FS Assistant	Eff. 02/10/2022 East Elementary
LeaAnn Smith	Playground Aide	Eff. 02/08/2022 North Intermediate
Nathan Varnell	Bus Driver	Eff. 02/08/2022 District Wide
Jordan Vermeire	Paraprofessional	Eff. 01/24/2022 West Elementary
Lynaya White	Bus Driver	Eff. 01/27/2022 District Wide

### TEMPORARY EMPLOYMENT

### VOLUNTARY COACHING

Caitlin Fowler	Lead Winterguard/Choreographer/Designer
Megan Howerton	Asst Winterguard/Choreographer/Designer
Darren Martin	Asst Winterguard/Choreographer/Designer
Derek Serowski	Head Volleyball Coach

**SUPPORT PERSONNEL  
RESIGNATIONS**

Deanna Coberly	Receptionist	Eff. 02/18/2022 Administration
Kim Downing	Paraprofessional	Eff. 01/25/2022 East Intermediate
Helen Hemphill	Personnel Manager	Eff. 03/04/2022 Administration
Jennifer Long	FS Asst Manager	Eff. 01/31/2022 Middle School
Melinda Patterson	Bldg Secretary	Eff. 02/18/2022 East Intermediate
Ashley Platzner	Paraprofessional	Eff 01/11/2022 Central Intermediate
Debora Snyder	EL Paraprofessional	Eff. 01/11/2022 North Intermediate
Donna Stumm	Bus Driver	Eff. 01/07/2022 District Wide

**TERMINATION**

Jeanette Hall	Lunch Clerk	Eff. 02/07/2022 Central Elementary
Tarah Meeks	Food Service Asst.	Eff. 01/04/2022 North Intermediate

Bixby Board of Education Special Meeting  
Wednesday, February 16, 2022  
Administrative Building  
109 N Armstrong St  
Bixby, OK 74008

Attendance Taken at 5:01 PM.

Justin Cheatham: Present  
Matt Dotson: Present  
Tristy Fryer: Present  
Julie Prox: Present  
Amanda Stephens: Present  
Present: 5.

1. As required by Sec. 311, Title 25 of the Oklahoma Statutes, notice is hereby given the Board of Education of Independent School District No.4, Tulsa County, Oklahoma, will hold a Special Meeting on Wednesday, February 16, 2022 at 5:00 p.m. at the BPS Administrative Center, 109 N. Armstrong, Bixby, OK.

2. Call meeting to Order/Roll Call

3. Board President will read the Statement of Procedures

4. Presentation by Parent on information contesting the Committee's decision finding the designated books should remain in the Bixby High School Library. (Limited to 15 minutes). Following the presentation, the Board of Education may ask questions relating to the information presented by Parent. Per Attachment

5. Presentation by the Committee's chair and/or Superintendent on information supporting the Committee's decision that the designated books should remain in the Bixby High School Library. (Limited to 15 minutes). Following the presentation, the Board of Education may ask questions about the information presented. Per Attachment

6. Discussion, consideration, and vote to affirm or not to affirm the Committee's decision to keep the books titled Thirteen Reasons Why and Me and Earl and the Dying Girl in the Bixby High School Library.

Vote to affirm the Committee's decision to keep the book Thirteen Reasons Why in the Bixby Public Schools library. Passed with a motion by Julie Prox and a second by Tristy Fryer.

Justin Cheatham: Yea  
Matt Dotson: Yea  
Tristy Fryer: Yea

Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 5, Nay: 0

Vote to affirm the Committee's decision to keep the book Me and Earl and the Dying Girl in the Bixby Public Schools library. Passed with a motion by Julie Prox and a second by Tristy Fryer.

Justin Cheatham: Nay  
Matt Dotson: Nay  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 3, Nay: 2

7. Vote to Adjourn

At 6:33 p.m. Approval of adjourning Passed with a motion by Julie Prox and a second by Amanda Stephens.

Justin Cheatham: Yea  
Matt Dotson: Yea  
Tristy Fryer: Yea  
Julie Prox: Yea  
Amanda Stephens: Yea  
Yea: 5, Nay: 0

8. Audio Recording of 2-16-2022 Special Board Meeting is attached to the online meeting.

\_\_\_\_\_  
President

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

**BOARD PRESIDENT'S STATEMENT  
FOR APPEAL FROM THE COMMITTEE'S DECISION**

The reason for this meeting is to hear the appeal from the committee's recommendation of retention of the books titled *Thirteen Reasons Why* and *Me and Earl and the Dying Girl* in the Bixby High School Library. The appeal hearing will follow the agenda of this meeting. This agenda provides an opportunity for both the Parent and Administration to present information for the Board's consideration in determining whether one or both of the books identified should be removed from the Bixby High School Library. Each side is limited to 15 minutes to make their presentation.

This hearing is an informal administrative appeal hearing that will not be governed by the strict rules of evidence such as those that would be used in a court proceeding. Thus, the Board of Education may hear statements from both parties including a review of documents and/or exhibits having merit in support of either side's position. Only the Parent or their designee, if any, will be addressing the Board, and thus no statements from anyone in the audience will be heard.

The Superintendent's designee, Ms. Jamie Milligan, is present. The parent is present. Do the Board Members or the parties or their representatives have any questions concerning the procedures for this hearing?

We will now hear the presentation of information from the Parent.

We are here today to discuss books. I am a lover of books and an avid reader. I read both fiction and non-fiction alike. I read fiction for the escape and non-fiction to expand my knowledge. I believe both are important. In fact, recently, I checked out "Communist Manifesto" by Karl Marx, not because I support communism, quite the opposite. But for me to understand Marxism a little more, I know I need to read more about it. If I was a supporter of banning books, this would likely be one I would enjoy getting rid of all together, Marxism is a terrible ideology and has done nothing to advance any civilization. But we have the first amendment under our constitution. I have the right to read that book and public libraries and bookstores have the right to sell or loan it out. The same would be true of the books we are discussing here tonight. I do not deny the importance of our first amendment and the right for these authors to have their books sold at a bookstore or loaned out via the public libraries. Any parent has the right to have access to these books that are up for debate tonight via these alternative routes, nobody is denying them access.

I do however see it differently in a public education setting. A place that educates children.

The public education system does a whole lot of monitoring/censoring in general. They monitor the food that goes into students' mouths, they monitor/censor the websites they have access to on the internet via their chrome books, they monitor/censor what words they can use in the hallways at school, they monitor what clothing they wear, they monitored their ability to smoke at school (when the legal age was 18), they monitor physical contact between students, but they don't see the need to monitor/censor what they provide students to read and fill their minds with. Why? A student's mind is his/her greatest asset, it is why we are here in the first place, to nurture it, to grow it. So, why does the administration feel it is okay to fill it with filth? To fill it with vulgarity? To fill it with obscenity?

I have spent countless hours, reading articles, studying the law, discussing this issue with multiple administrators, hearing their defense and them hearing mine. We seem to be on opposite sides in regards to what is appropriate in a public education institution for children. Tonight, we are bringing to light two books, believe me when I tell you this is just the tip of the iceberg. This is a problem not just at BPS but in most schools within Tulsa County, Oklahoma, and across the United States. Which begs to ask why public institutions who are supposed to be educating our children are deciding this type of material is appropriate to be in students' hands?

**1. Freedom of speech does not include the right:**

- To make or distribute obscene materials.  
*Roth v. United States*, 354 U.S. 476 (1957).
- **Obscene** - Offensive to accepted standards of decency. Of or relating to materials that can be regulated or criminalized because their depiction of nudity, sex, or excretion is patently offensive and without artistic or scientific value. Morally repulsive; disgusting.

**2. Board of Education vs. Pico**

- Justice Brennan noted that his decision was, limited to the **removal** of books from a school library, and not extending to the **acquisition** of books or their use in the school curriculum.
- Brennan also recognized that **local school boards had "broad discretion in the management of school affairs,"** and said that if a board acted solely upon the **"educational suitability"** of the books in question or solely because the books were **"pervasively vulgar,"** such actions would not be unconstitutional.

- *Since Pico*, First Amendment litigation involving book censorship in schools has usually turned on the rights of a school board to control classroom curricula by prohibiting the use of certain texts and/or an inquiry into whether a certain challenged text is “vulgar.”
  - vulgar
  - lacking in cultivation, or taste: coarse
  - morally crude, undeveloped: gross
  - offensive in language
  - lewdly or profanely indecent
- Constitutionally acceptable motivations can be shown if the books are removed because they are deemed “pervasively vulgar” or educationally unsuitable. These motives do not threaten to suppress ideas and therefore are constitutionally permissible.

With the information stated above regarding the supreme court case, it clearly shows that these two books are not protected under the first amendment. The reason being is that I am not asking for the suppression of idea or thought, the topics of cancer and suicide, of which is the subject of these book, I completely agree are acceptable. The motive behind their removal is for vulgarity and being sexually explicit and obscene. Neither book discussed tonight therefore are educationally suitable.

### 3. Bixby Handbook

- LANGUAGE – pg. 25
  - Profane, vulgar and racist language is unacceptable
- CLOTHING – Pg. 8
  - obscene, lewd, violent, or sexually suggestive slogans and/or graphics, or symbols,

### 4. Parent Bill of Rights

- Oklahoma Statutes – Title 25
  - All parental rights are reserved to a parent of a minor child without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution, including, but not limited to, the following rights:
    - The right to direct the education of the minor child;
    - The right to direct the upbringing of the minor child;
    - The right to direct the moral or religious training of the minor child;

### 5. Obscenity Law – Title 21 Oklahoma Statutes

- Oklahoma is blessed to be one of seven states that has an obscenity law in place. *Miller vs California* (1973) was decided and held that obscene material is not protected by the First Amendment, and set forth the standards that Oklahoma follows. This law is to protect children/minors from being exposed to material that would otherwise be criminal. Exposing our children to sex at too early of an age can be damaging. In fact, I found a study that showed a significant increase in pregnancy (10x more) in students who had been subjected to sexually explicit material too young. This YA genre is filled with sexually explicit/obscene material. THAT SHOULD NOT BE! The best question to ask yourself is why are these authors, dozens of them, deciding to write this crap? **Why do we need to subject children to adult themes?** And the answer here at Bixby is we

do not. Tonight, you as the board get to make the decision to get rid of these books filled with obscenity. Thirteen Reasons Why has a very descriptive rape scene, very descriptive. It is obscene, it is pornographic. ME and Earl has multiple conversations relating to sex and talks about eating pussy, that is OBSCENE and it is pornographic. Teens have a lack of experience emotionally and there are enormous emotional changes taking place. Teens hormones are raging and will be aroused at the slightest mention of a sexual experience, possibly setting the stage or planting a seed for interest in sex that may not have been there otherwise. Do you want that on your conscience when you have the ability to take it away? These children deserve to be protected; they deserve better. And that is why I am standing here today.

### Lexile and Words

1. **Shit is a word considered to be vulgar and profane in Modern English..** It could also be used to refer to any other noun in general or as an expression of annoyance, surprise or anger. (Wikipedia as resource)
  - Me and Earl and the dying girl – **The word shit and forms of it are used 87 time throughout 23 chapters**
2. **Fuck is a profane English-language word.** It often refers to the act of sexual intercourse, but is also commonly used as an intensifier or to convey disdain. **Fuck is considered offensive and vulgar.**
  - Me and Earl and the dying girl – **The word fuck and forms of it are used 114 times throughout 23 chapters (Just these two words combined are said 201 times)**
3. **LEXILE** – Hand out (**exhibit A**) and discuss briefly the lexile grade level chart

### American Library Association and the Major Motion Picture Association

“If the individual is concerned about a children’s or young adult resource, explain that parents and guardians play a major role in guiding their child’s reading and library use.” ALA website

If this statement above is true according to the ALA and it is known via my conversations with the administration that the librarian uses the ALA as a resource for her decision making, then why do we not have something in place for parents TO KNOW what their child is reading? What are ways, for us, as parents to know what our children are reading?

Also, according to the ALA they don’t agree with censoring any book. So, where is the line for a public education institution? If all books, according to the ALA are protected under the first amendment and are not limited by age, sounds like there is no line. But is that true here at Bixby? Do we have limits to what enters through our gatekeeper of books? If so, what are those guidelines? What is appropriate and what is not? Why is one person deciding what is appropriate and what is inappropriate for our children? Not to mention, there is no way one person can vet all the books, it’s not humanly possible, which allows for a huge hole of questionable books to fall through. And just because a book receives an award is hardly a reason to vet it. Me and Earl and the dying girl received several awards. Really? With over 200 curse words, a lot of crude talk, and written at a 3<sup>rd</sup> grade level, how in the world is that worthy of an award?

I have handed you papers (**exhibit B**) explaining how the motion picture industry decides movies are rated. Please notice the highlighted section under PG-13, **one explicative, one**, would be allowed for it to fall in the category of PG-13. **Me and Earl and the dying girl has 114 F bombs**. This book, if made into a movie, would be rated R. So It would not be allowed to be viewed on any school campus here or across the country.

So, why then, is this same material as a book, allowed without restrictions in our school libraries? Did you know too, that the motion picture industry is not required to rate their movies, they choose to, because they choose to inform parents and have been doing so since 1968. To quote from their website, "the film rating system provides parents with the information needed to determine if a film is appropriate for their children." **And their board is comprised of an independent group of parents.**

The rating system is **NOT** determined by the motion picture association, directors, actors, or anyone else that is working in that industry, so as to be unbiased and fair, they have chosen parents, just parents to make up that board. Let that sink in for a minute.

**But the ALA doesn't support a rating system.** They do not think it is appropriate to add ratings. "Because these rating systems are devised by private groups using subjective and changing criteria to advise people of suitability or content of materials. It is the library's responsibility to prevent the imposition or endorsement of private rating systems. Including such ratings in the bibliographic record, library records, and other library-authored finding aids would predispose people's attitudes toward the material and thus violate the *Library Bill of Rights*."

<https://www.ala.org/advocacy/intfreedom/labelingratingqa>

In my discussions with the administration however, a rating system is one idea that they agreed was necessary, but how long will it be before it's implemented and/or how do we know if it will be successful? The ALA doesn't even agree it should happen and it violates their bill of rights (not that I give a rat's ass about the ALA and I think we need to move away from all these associations). So, while there are ideas out there to better educate parents as to the books that could be in the hands of their children, we have nothing in place today and there are lots of uncertainties. A couple of options to ponder:

- **Material Review Committee** – this is the best route in my opinion, it limits these types of books from gaining access into the library at all and has more than one person vetting books. This option also does not violate the first amendment per Justice Brennan. A school may decide to admit a book or not without the first amendment being violated. This was the idea we originally came to an agreement on and Miller backed out of supporting this route. (Diverse thought/opinion is needed here).
- **Rating System Committee** is another option. If the administration decides to choose this route, I believe it is only fair to have diverse thought and perspective on this committee. Choosing only individuals who think alike will not serve justice to our community. Group Think is detrimental. I also am concerned that books that are obscene and vulgar still have a place on the shelf.

There are too many associations and unions related to public education. These associations make decisions for what is best for them, not what is best for us. We are unique, a one size fits all approach just doesn't work. We need to move away from Associations like OSSBA that create policies, or the ALA creating the criteria for books in our libraries. They have an agenda. I have yet to see a success story related to public education having ties to either of these types of entities. I have read articles even from 30 years ago that show the same terrible trap these have caused our system. Education should be quite simple. Kids, parents, teachers, classrooms, reading, writing, arithmetic, history and gym. The End. Adding more doesn't add "more." More common sense and critical thinking skills needs to make a comeback. Facts over feelings.

For my final thought. As a board, it would be erroneous to keep these books in our libraries with the hope or idea of some sort of new system related to transparency of the material being implemented. Because today, we have no such system. Therefore, your vote should be based on what the access to the students is today, not what it could be. I look forward to getting your vote on the record. Thank you for your time and thanks to everyone that is here today from the community, much appreciated.

In front of you is a folder containing the original complaint, the committee's response, slides of a process that we will review, and legal opinions.

Thank you so much for the opportunity to address the board and to represent the appeal committee. This committee included 3 administrators, including myself, 2 parents, 1 media specialist, and 3 teachers. The committee was provided a copy of our policy for selection of materials, 3105, along with information on the First Amendment. Each member was given ample time to review the books in question to acquire first-hand knowledge and to be able to articulately respond to each objection. During the committee meeting, members had the opportunity to share their perspectives of each book individually.

As you can see from the committee's report, the committee was thorough in documenting a response to the objections set forth by Mrs. Danforth. Each objection was reviewed and discussed, and the committee responded to the objections based on the committee's knowledge of information about the books in question, our policy, and the law.

Let me start by addressing the review of the two books.

Although the committee recognized that some scenes in 13 Reasons Why were difficult to read, by definition, the book is not pornographic. The committee also disagreed with the claim that the book glorifies suicide. Instead, this book illustrates the haunting aftermath of suicide alongside lessons for teenagers on the importance of treating one another with kindness. The committee members also acknowledged that this book was made into a Netflix series. Several committee members who had also seen the series reported the book and series deviate in content in numerous areas. Members of our community should not watch the series and assume the book is accurately depicted in it.

13 Reasons Why has been on the shelf at the HS since 2015 and the 9GC since 2017. It has been checked out at the HS 16 times and at the 9GC 4 times. It should also be noted that this book was selected for the Sequoyah Masterlist and went on to win the award in 2010.

Me and Earl and the Dying Girl does contain profanity. The committee felt that some students have the maturity to deal with the language. There are illegal drugs that are accidentally ingested by the characters, and later in the book, this instance becomes part of the lessons of anti-drug use. There is also an objection made by Mrs. Danforth relative to discussions between the characters

which reference sexual content. The committee agreed that although some of the language is crude and crass, the conversation is actually the opposite of sexual. The author uses this particular scene to illustrate the level of inexperience and immaturity of the characters. This immaturity is highlighted throughout the book and is part of the lessons conveyed. This book at its heart is a coming-of-age story tackling lessons of loss and grief through the story of a young girl fighting Leukemia.

Me and Earl and the Dying Girl has been on the shelf at the HS since 2017 and has been checked out 5 times. It should be noted that this title was also on the list of Best Fiction for Young Adults from the American Library Association in 2013.

To give more context into the media specialist's materials selection process, both books were reviewed through the scope of a media specialist's expertise, keeping in mind our community and the students who are represented in our schools. Media specialists must hold at least a Master's degree in Library Sciences from American Library Association or American Association of School Librarians accredited programs. Standard II.2.1 of ALA's Standards for Accreditation of Master's Programs in Library and Information Studies states that in order for a program to be accredited, it must foster "development of

library and information professionals who will assume a leadership role in providing services and **collections appropriate for the communities that are served**". American Association of School Librarians follows the same practices, declaring that librarians must "use evaluation criteria and selection tools to develop, curate, organize, and manage a collection designed to meet the diverse curricular and personal needs of the learning community."

To put that into perspective in how it's implemented at BPS, our media specialists follow district policy for criteria for the selection of library materials and resources. In selecting materials for purchase, the media specialist evaluates the existing collection and consults reputable, unbiased, professionally prepared selection aids.

According to policy, Media Specialists shall use the following <sup>from our Board Policy</sup> criteria as a guide for selecting and purchasing library materials and resources: ~~I will send you~~ *You have a copy of that policy*

1. Educational significance
2. Contribution the material/resource makes to the written curriculum and to the interests of the students
3. Reviews found in standard selection sources
4. Literary and professional reputation and significance of the author, producer, and/or publisher

5. Validity, currency, and appropriateness of material
6. Contribution the material/resource make to the breadth of representative viewpoints
7. Degree of potential user appeal
8. Artistic quality and/or literary style
9. Quality of factual content and presentation
10. Value commensurate with cost and/or need
11. Timeliness or permanence.

The selection aids are used as review journals include resources like: (ex: *School Library Journal*, *Book List*, *Publishers Weekly*, *Kirkus Review*, *The Horn Book Magazine*, etc.); award lists (ex: the Oklahoma Sequoyah List, the Redbud List, and various ALA "best of" lists, the Newbery Award, the Caldecott Award, etc.); and student and/or teacher book requests. Any books requested by stakeholders are vetted according to the same standards as other materials. If there is not a clear consensus among these sources, the media specialists either do not order the material in question or read it through the lens of board policy prior to adding it to the collection. If any review indicates an area of concern or that might be outside of the community norm, they read the entire book before selecting or rejecting it.

After meeting with the librarians numerous times through this process, it is apparent they are very cognizant of the population they serve. They do their best to keep a balanced collection by choosing materials which represent varied viewpoints. They are highly-qualified professionals who take these responsibilities seriously. They strive to serve their students and in turn, our community well, while ensuring each and every student is represented in our schools.

Relative to pertinent legal and case law I <sup>have</sup> ~~would like to~~ provide a handout as a reference to some Supreme Court decisions which govern collection development, the First Amendment, and the body of Supreme Court decisions.

Two cases of note for your review are highlighted on your copy.

- 1. Right to Read Defense Committee v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978):** The Chelsea, Mass. School Committee decided to bar from the high school library a poetry anthology, *Male and Female under 18*, because of the inclusion of an "offensive" and "damaging" poem, "The City to a Young Girl," written by a fifteen-year-old girl. Challenged in U.S. District Court, Joseph L. Tauro ruled: **"The library is 'a mighty**

resource in the marketplace of ideas.' There a student can literally explore the unknown, and discover areas of interest and thought not covered by the prescribed curriculum. The student who discovers the magic of the library is on the way to a life-long experience of self-education and enrichment. That student learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom. The most effective antidote to the poison of mindless orthodoxy is ready access to a broad sweep of ideas and philosophies. There is no danger from such exposure. The danger is mind control. The committee's ban of the anthology *Male and Female* is enjoined."

2. **Case v. Unified School District No. 233, 908 F. Supp. 864 (D. Kan. 1995):** When the Olathe, Kansas, School Board voted to remove the book *Annie on My Mind*, a novel depicting a lesbian relationship between two teenagers, from the district's junior and senior high school libraries, the federal district court in Kansas found they violated the students' rights under the First Amendment to the United States Constitution and the corresponding provisions of the Kansas State Constitution. Despite the fact that the school board testified that they had removed the book because of

"educational unsuitability," which is within their rights under the Pico decision, it became obvious from their testimony that the book was removed because they disapproved of the book's ideology. In addition, it was found that the school board had violated their own materials selection and reconsideration policies, which weighed heavily in the judge's decision.

Beyond these rulings, the United States has largely deferred to local control of policies and regulations concerning the selection of library materials. The Standards for Accreditation of Oklahoma Schools directs collection development practices to be guided by "a written policy, approved by the local board, concerning the criteria to be used in the evaluation and selection of materials for the media program. The written policies should contain criteria for selection, responsibility for the selection, and guidelines for reconsideration", which once again leads us directly back to our own board policy as reviewed earlier.

As the committee discussed and unanimously voted to keep these books on the shelves, we have also discussed the rights of parents to advocate for their children. I truly valued the opportunity to work with and discuss this

issue with Mrs. Danforth. The committee along with myself recognize her advocacy for her child. As a school district, we know everyone wins when we partner with parents successfully. I commend her for thoughtful parenting, determined advocacy, and willingness to partner with us.

Even though the committee does not believe these books should be removed from circulation for all students, and that allowing them to remain is in alignment with our school's policy and the First Amendment, the district does recognize each parent's right to guide their own children. As it states in our policy:

A parent has the right to request his/her child be exempted from the use of library media materials/resources which seem incompatible with the student's or parent's values or beliefs. It is recommended that classroom assignments involving library media materials/resources provide alternative choices. Individual parents may not, however, determine the reading of, listening to, or viewing of materials for students other than their own children.

With that said, we have been working on a way for parents to have increased autonomy relative to the books their student is able to check out. Together, we have



Bixby Public Schools  
Limited Library Access Procedures

This format will look differently as we post it to our website but we wanted you all to be able to review the content and procedures as we discuss this appeal today.

Concerned about a specific title? Browse our Media Center catalogs below:

Central Elementary

Central Intermediate

East Campus

North Elementary

North Intermediate

West Campus

Middle School

9th Grade Center

High School

each link  
leads to  
destination that  
houses the  
books in that  
school's library

This portion would allow parents to browse the library catalog at each school site with the purpose of checking for titles of concern.

## Reviewing Books

Parents should use any and all resources they deem appropriate to review the selections in our library.

Reviews are available at the following resources:

- [School Library Journal](#)
- [Publisher's Weekly](#)
- [American Library Association](#)
  - [Kirkus](#)
  - [Book List](#)
  - [Horn Book](#)
- [Common Sense Media](#)

Against  
This lists  
resources  
that parents  
can use ~~with~~  
~~the library list~~ to  
decide if a book  
is right for  
their child

Of course, parents are able to use any resource they prefer to review titles of concern. However, we wanted to provide a place to start for those who may need one.

## How Can Parents/Guardians Be Involved in their Student's Library Book Choices?

BPS strives to partner with parents/guardians in their child's education. Parents who wish to have autonomy over the selection of their student's library materials should refer to the process below:

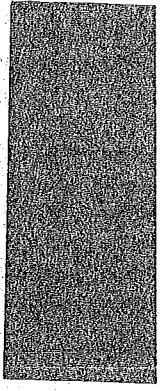
- Complete this form.
- The media specialist at the applicable school site will follow up via email with a parent login and password to access the library catalog.
- Parents will use this access to place holds on books they approve for their child to check out.

### What does this look like for students?

- Students to whom these procedures apply will not participate in self checkout at the library.
- The media specialist will pull the approved books and check them out to the student.

- This process provides an avenue for parents who wish to have more autonomy over their student's library book selections.
- From the parent's side, this means completing a simple form to indicate their wish to do so.
- From there, the media specialist will provide parents with a log in allowing them to access the catalog system for the purpose of choosing books and placing them on hold <sup>for reserving</sup>. This shifts the checkout process access to the parent instead of the student.
- Media specialists will be notified of these holds <sup>or reservations</sup> and can then check the selected titles out to the student. ~~There is also a section to add to favorites~~
- Students to whom these procedures apply will not be able to partake in self checkout. ~~but will still have access to library material w/ Parental Approval~~ <sup>to easily pull for the next time the student checks out a book.</sup>
- We are hopeful this process will accomplish a couple of good things:
  - Allow parents who wish for more control to have just that, while not limiting access for other students.
  - Encourage meaningful conversations among parents and students about what they'd like to read and why.

devised procedures for parents to review our library catalogs and communicate with our media specialists, ~~the specific titles they wish to restrict for their children. Additionally, they also have the option to opt-out of library checkout altogether.~~



If I could direct you to the slides.

This process might need to be adjusted as we put it in practice but these slides are the basic framework.

In conclusion, the district recommends supporting the committee's decision that 13 Reasons Why and Me and Earl and the dying girl remain in circulation. The district supports our policy that states a parent has the right to request his/her child be exempted from the use of library media materials/resources which seem incompatible with their values or beliefs. But no parent has the right to determine access for students other than their own children. We believe the recommended procedure meets policy, upholds constitutional standards, and respects the rights of all parents.

Do you have any questions?

# Discussion on all Items

## **Bixby Special Board Meeting**

**February 16, 2022**

**ITEM 1 – Minutes**

**ITEM 2 – Minutes**

**ITEM 3 – Per Attachment**

**ITEM 4 – Ms. Danforth Per Attachment**

Stephens: You are welcome to sit, you can pull the microphone to you. Sit, stand whatever is the easiest for you. Just tell Sherry when you are ready and she'll start the timer.

Danforth: probably yeah do I need to stand?

Miller: You can talk right into it, it will hear you.

Danforth: Ok, let me set mine to so I can have it. Ok I am ready.

Danforth's presentation to the board per the attachment.

**Discussion on Item 4 presentation: Per Attachment**

Stephens: Presentation by the committee chair and or Superintendent on information supporting the Committee's decision that the designated books should remain in the Bixby High School library. Limited to 15 minutes. I'm sorry, we have to ask questions if we want to too Ms. Danforth after her presentation, I got ahead of myself. if anyone has a question go ahead.

Fryer: My question is, as a parent I appreciate your concerns and definitely bringing those to the school board. I know each of us are parents and so it definitely when there's a concern I think that's important. How did you become aware of these books, did your child check them out in the library?

Danforth: The 13 Reasons Why, my son did. He actually brought that to my attention. I had seen Me and Earl and the Dying Girl I saw online and it was before I was in Moms for Liberty. I had been seeing something's happening which is actually part of what sparked that as well. I've seen things I didn't like. But 13 Reasons Why, my son checked that book out over last summer and he actually told me when I saw that Earl one he said mom I have a worse one for you. He said I liked the book and when I got to the rape scene he stopped reading it because it bothered him and it made him feel like he felt like he shouldn't feel and so he as a 14 year old was uncomfortable with what he was reading and didn't know that was in there and I didn't know he was reading, you know, I didn't think to look at books. I'm thinking its young adult that I don't have to worry about that kind of stuff, I was wrong.

Cheatham: I have just one quick question did your son feel there was anyway for him to kind of get an idea of what the book was about before he started reading it or is this something that they start reading it like, like you said like hey I didn't realize.

Danforth: Yeah there's really not, you can go to Common Sense Media. Once you start looking for what these books have it's really hard and we talked about this in our meetings, is you really have to dig to

find the bad stuff it's not just out there like oh look here it is so you won't know. Even common sense media, which I feel, as for movies, does a really good job of giving you the idea of what's in that but for books and I think it's because there's no rating system there's no way to know it's just free for all. You know they may say, I mean even common sense media on both those, doesn't really give you any sense of what's actually in it.

Fryer: Were either of these books assigned to your child?

Danforth: No they were not, this was by choice.

Stephens: Anyone else?

Dotson: Yah I have a question. Thank you for your time and coming in and presenting your case to us. Say we remove these books, moving forward how would you like to see Bixby Public School be transparent or more transparent when it comes to checking out books to our children. Because like you said in your statement, it's nearly impossible for us to catch every second word

Danforth: I don't expect anyone could.

Dotson: and words and things that are used in certain books when it comes to colorful language or offensive language. Um also you know is I have four children of my own in the district and so it's you know I don't want my kids to hear those words.

Danforth: Right

Dotson: I try to shield my kids from hearing those words but as a parent and trying to think about the community you know you have to think about you know what's offensive to you might not be offensive to someone else and I'm not saying I agree with that or not but I'm just saying that's the perspective that's an argument. However, moving forward how would you like to see our school district handle checking out resources to our Kids?

Danforth: I mean I would prefer limiting what comes in. That aside if I don't have that option I think one option that I thought would be helpful is that when books are checked out there's an email that goes to the parents alerting them to that. Right now I have no idea when either of my sons checked out a book. I don't get anything and maybe there is something but I've never had it. I think it and I think we need to know there has to be some kind of system in place. When there's, you know it's like my son checked out that book and there's a rape scene in there and it's like I don't want I don't raise my kids to read that crap OK. I don't want them reading it. My son made that choice on his own to stop reading it, because I'm raising him in that way but not every kid has that luxury of. You know some kids aren't necessarily in the greatest home or whatever and they're not gonna necessarily get a parent that's gonna respond, so that's the other part of it too is. There has to be a way for so the school to have a system in place where a book is above their level emotionally or curse words or whatever, that we say there's some kind of a system of flagging system to alert and I don't know how the best way to implement that would be but I believe that it has to happen. I mean there it's just the books are getting worse and worse. I mean we have found dozens of books that are just terrible, I mean worse than these two and kids don't need to be reading that kind of stuff willy nilly where nobody has a clue that they're even reading it. Um I can't go and say OK before you read it. I can't take the time, nobody can to read it 2 - 300 page book before my son reads it. It will take me forever. You know I mean I have a life going on and most parents both

work so there has to be some kind of thing put into place and I think having a committee and like I mentioned like not just picking who you want to be on it. I've mentioned this before I don't like the bias of it. It feels that way whether they agree with me or not, there has to be another thought in there someone like myself and I volunteered to be a part of it I want to but they don't necessarily want another thought. I was even objected from being a part of this uh, rating system. I asked to be part of it and no I just get to see what they decide. Well why can't I be a part of it you know stop doing this like we have one thing in place and we can't go outside of that, that's where all these policies and rules that come in from associations. I feel like they limit, it limits what can happen here. Mr. Miller and I came up with a great, I felt like it was going to be a great possibility, but then I feel like you then they go talk to their lawyers and OSSBA and all that stuff and then it changes. Well because they don't know what's best for our community. Their doing what's best based on what they think is best for their association or their law. Whatever their agenda is. But Bixby's agenda isn't gonna be the same it's just not, just not the same as TPS. You know were just different than anywhere every school system is unique and I think you have to appreciate that fact and I feel like it gets, we just get kind of get lumped into that but I think we have to have some sort of vetting that's more than one person and I even said this to them with the the librarian there's no way she can vet all these books it's not even possible. I can't blame her, I can't be mad at her, she's doing her best job that she could do with what resources she has but there's holes. There's things missing and we need to be aware of that and fix it and I think its fixable I think we just have to brainstorm ideas but we need multiple ideas so we're not in that group thing where it's just echo chamber who everyone has the same idea and that's all we're looking at. I have a different idea I have a different perspective and I think that should be appreciated because I sit here but I have a lot of parents behind me here physically and not that feel the same way that I do. so I'm not alone in my, you may think I'm some kind of a crazy person, but I'm not I'm just concerned parent who has a lot of parents who feel the same way. Trust me I'm not alone.

Cheatham: Follow up question to that, if we had, now this is hypothetical question because we don't have a system for grading or notifying. If we had a system in place that was efficient, that worked well. Would you still want these books removed or would you be OK with these books being in place if we had a sufficient system that would notify parents of what kind of material that their children have access to?

Danforth: Um, that's kind of a loaded question. I don't know, I still I think there are certain books that don't have a place but if we, if I don't get that choice, we have to come up with something else then. I'll do what we have to do I'm not gonna be up here and be Hitler either. I know that I'm one of you know however many students we have here and one of how many parents we have here. I know there's a diverse thought in how people see this. I'm not naive to that and I'm open to coming up with something but I think it's important that I'm part of it and or someone that has that thinks similar to me so that we can feel like we're being heard and that there's something that can work for both sides of the aisle here. You know I'm not trying to say it you know and Mr. Miller even said when we met like I'm so glad you don't come in here and I don't want that I want to work together. So how do we figure that out but I want too.

Stephens: Are there any other questions? Thank you.

**Item #5 - Ms. Milligan Per attachment**

**Discussion and questions on Item #5**

Cheatham: I have a couple of questions. Um the first one as stated, we were offered the material to read through the committee. Um you stated that the committee and the administration agrees with the committees finding that specifically said that ah Me, Earl and the Dying Girl was that we had some students mature enough. Now that doesn't, to me when I say some students that means we recognize, the school recognizes that not all high school students are mature enough to read that and according to our policy 3105 it even mentions that the books should be selected based on maturity levels of the students to serve. The question I have is the policy doesn't it says the students we serve as a whole. Not some students so how do you think and I guess the question I'm asking you is. If we don't have a grading system or system to get it out there. Then how are we controlling which students are mature enough and which are not?

Milligan: So I would say that any of the books that our Media specialist vet, that they look through a lens of the entire school population and so it might be that any of our books are appropriate for some students and not for others but when they look for books to purchase, they tried to have a balanced library that meets the needs of all of our students.

Cheatham: Would you say it so you mentioned the First Amendment and freedom of speech is a huge deal but we do have a system for limiting certain materials that come in correct?

Milligan: We do.

Cheatham: And uh, in that system do you feel like there's any way for materials to slip through that system that may not be appropriate?

Milligan: Um I think that there's always a possibility um that that might happen but I do think that those media specialists are trained and very cognizant of what they're doing and stay on point to be able to react to what they're putting in our school library. After meeting with them I feel very assured that they understand the process and are able to follow it and do the best that they can.

Fryer: I have a question on the committee that reviewed the book. Um I know two parents that served on that committee and I know there's administrators and teachers.

Milligan: Yes

Fryer: Of those administrators and teachers, did we have parents that also served? If they were teachers and administrators were they also parents?

Milligan: Yes

Fryer: OK

Milligan: Yes, ma'am.

Stephens: I have a question, ah you mentioned that 13 Reasons has been on our shelf since 2015 so that's about seven years

Milligan: mm-hmm

Stephens: and Earls been on our shelf since 2017 about four years. Have we received any complaints or anything of the sort for either of those books during this time?

Milligan: No we have not, that I am aware of.

Dotson: Thank you Mrs. Milligan I appreciate it. Can you recall remember the last time someone has requested books to be removed from our libraries?

Milligan: Um, I've been here for 10 years and I've never heard of that, in the ten years I have been here.

Dotson: Just a follow up, how do we evaluate our media specialist annually? How do we make sure they're you know following the pulse of the community and their selections of books?

Milligan: You know they have a set of standards similar to teachers. Through the TLE process. So um they are evaluated from our administrators and they have a rubric that set against just like teachers do.

Dotson: OK

Stephens: Any other questions?

Cheatham: I have one question on the new system cuz that's the first that I've seen this

Milligan: And I'm sorry I went through it kind of fast.

Cheatham: kind of fast, now. I believe we do have a copy. Now with this new system that's changing the way parents can select that so is that not a policy change or will be a policy change?

Milligan: No actually in our policy it gives parents the right and so we're executing that with this.

Cheatham: Ok cuz I thought with this policy it gives the parents the right to take them out the library completely not individually select books.

Milligan: No, just like I read they have the right to discern for their own child and so that's what we're doing we're executing that right in the a procedure.

Cheatham: But it doesn't give any type of grading system or anything. The parent would have to look through the long list, try to find books, and then research. Does it notify them when their kids check out a book and what that book was?

Milligan: Well they're actually, they're actually sending that to the media specialist. So what we talked about was something similar to this. Um going to the library the student makes a list of five or six or whatever you all decide as a parent you bring them back home you have the discussion. You're able to look those books up and look at the resources that we provided or look at your own and then you would then send the reservation or the checkout it goes automatically through this system to the media specialists who will check it out and hand it to the student and then they would have it and the parent would know and we would all be on the same page.

Cheatham: Could the student rent out a book that wasn't on that list?

Milligan: No, because what happens is. Um in this process once the parent notifies that they want to be part of that process we would remove that so the student wouldn't have that ability. It would have to come from the parent and then we would check it out to the student.

Cheatham: Sorry one last question then I think I'm done. Um in our selection process that

Milligan: m-hmm

Ceatham: which the librarians use and I think our librarians do a great job. It's just a lot of books.

Milligan: I do too.

Ceatham: Um, they use the community norm on what would be offensive or not?

Milligan: They are all very aware of the community that we live in,

Ceatham: OK

Milligan: I can tell you that.

Ceatham: Thank you.

Fryer: And I apologize if you already, um said this. When would this be rolled out?

Milligan: So we hope to roll it out quickly um and I think I said this but this is a framework. We might have to tweak it, some little processes but it's really there in Destiny now. Um so it's really a matter of, you know, Jessica the technology guru, being able to build it on our website and get it in our parents hands.

Fryer: So this would give parents ownership of what their kids can and cannot check out?

Milligan: It absolutely would.

Fryer: Ok

Stephens: Any other questions? Great

**Item #6** Per agenda item

Prox: Made a motion to approve - Item #6

Ceatham: Before we vote I have a question.

Stephens: Hold on there is a motion so

Ceatham: OK

Stephens: we need a second.

Tristy: Second

Stephens: Ok now we can discuss

Ceatham: Well my discussion was when we started it, it said vote on each book.

Stephens: Sure we can divide it up. That's not a problem.

Ceatham: That's what I requested we divide.

Stephens: Would you rather divide it up?

Ceatham: Yes

Stephens: Ok no problem. OK so Ms. Prox, could you take number # 6 and divide it please.

**Item #6 Part 1**

Prox: I'll make a motion that we vote to affirm the committee's decision to keep the book titled 13 Reasons Why in the Bixby High School library.

Fryer: Second

Stephens: OK, I have a motion that we affirm the committee's decision to keep the book titled 13 Reasons Why in the Bixby High School Library. Would you like some discussion? If so go ahead.

Cheatham: So I just want to, cuz there is a lot of stuff out there and I just want to say I have seen suicide first hand. I have a lot of experience with it with, with what I do. I'm very aware that that's a big problem. It has been, it's been worse over the last couple years among students. Um, I read this book and I personally thought that the book was more focused on making you aware of how you behave around people and how that might affect them rather than, to me rather than glorifying suicide. I will say that my daughter had checked this book out and I didn't even know it and while I'm reading at home she goes what are you reading? I told her and she said I quit reading that halfway through that's too disturbing. It did make me realize that my mindset may be different from teenagers. Because the book didn't seem disturbing. I mean there was a tough scene in there but it didn't seem suicide wise that disturbing to me personally when I read it. I thought the book was more of uh, you know, you never know what your actions may affect somebody else. I will say, I feel like 13 Reasons Why, if our school districts will use it the right away, could be a great tool to maybe help us become aware of students that might be dealing with some issues. Like if a student rents this book out, we need our counselors to reach out to that student and just say, hey is everything all right? I noticed you checked out 13 Reasons why. You know what I mean? I feel like we can use this book as an advantage. If we would do so. So this one was tough for me. I definitely see that there's tough spots but in general I kind of got the feeling that it wasn't necessarily glorifying suicide. Like I said, I will. I feel like I'm going to vote aye on this to keep it in circulation just because I feel like it can serve the district in a positive way to maybe help us shed some light on who might be struggling with such issues.

Stephens: Any other discussion? Thank you Justin

Dotson: I'll just say you know both books are um. You know we can all agree cancer is very important, suicide is very important. Those are very important topics for us to discuss. I think um, as was mentioned this is the tip of the iceberg when you. If you set a precedent of, you know let's, let's get rid of all the books we don't agree with um and so it's a little, that's a little concerning and you know um from a parent. You know we want to be able to have the ability to trust our administration, our administrators, our site principles our media specialists in our district to have the best interest of our children. In my experience, since 2007 our school district has had nothing but the best interest for all of our children, as what led me to be on the school board. There are gonna be things that I don't agree with in public schools in general as a whole, not just with books you know as parents but I can say Mr. Miller, Mr. Miller, Ms. Milligan, all of our staff and all of our teachers have been nothing but incredible. So there are gonna be things that our kids are exposed to. Hearing the S word and hearing the F word, just go walk through the high school you know. It's life right and there are there are vulgar things you know for us have to shield our children from hearing. But I just do want to say that our Administration is

incredible being and in being there for our children. One thing I will say about Mr. Miller is he listens, he listens to the pulse of the community. He, he you know if someone, you know he is open door policy call me give him my number give him my email to come by and talk to him. I mean he is our Superintendent and uh, I trust him being able to get to work with him. We trust him in his leadership and his decisions and anyways, I just wanted to advocate for our school district that they care greatly about our children all of our administrators and teachers and support staff. So um, anyways that's what I have to say.

Stephens: Anyone else?

Cheatham: Clarification, before we vote. We are voting on 13 Reasons Why?

Stephens: Correct

Cheatham: and the I vote means your voting to keep it in our library.

Stephens: That is correct

Dotson: To double, er to back up what Justin said on our policy about uh and I underlined it the maturity levels of the students served. I'm a little bit maybe we should revise that language a little bit possibly. If we have the media specialist evaluating the student's maturity level. You know you could have a 12th grader that is not mature right like I mean just based on age if we're checking books out based upon their grade you know and if is the grade power dictating their maturity level. You know what I mean that's such a hard subjective thing to know and more than likely that person doesn't know that kid you know. So maybe we can revisit or discuss that language a little bit um.

Fryer: But with our schools process they are going to put into place, parents would have ownership. Because what I choose as a parent might not be what somebody else chooses and vice versa because my daughter did read 13 Reasons and I know that book well and um. It was OK for her but I also had friends that let their kids read it and friends that didn't and that was I respected that as a parents choice to be able to go that route.

Stephens: Any other discussion?

Dotson: One, just clarification, I'm so sorry. So this is a opt out for kids moving forward, a new procedure.

Milligan: Yes

Dotson: This is an opt out for us parents to sign that we wed don't. That we are going to be a gateway between books and our kids and their resources.

Milligan: yes

Dotson: If you don't choose to do this, will you still be notified of the books that your kids signed out?

Milligan: No, I think if you were interested you can always reach out to the librarians and I think they are able to keep a history of books that your child has checked out but they wouldn't automatically notify you.

Dotson: That information is available now right,

Milligan: Yes, it is

Dotson: We could call and get their checkout list.

Milligan: Yes m-hmm

Dotson: OK thanks Jamie.

Milligan: M-hmm

Stephens: Any other discussion? OK, so we are going to vote on whether or not to affirm the committee's decision to keep the book titles 13 Reasons Why in the Bixby High School library.

## **Item #6 Part 2**

Motion by Julie Prox to keep the book Me and Earl and the Dying Girl in the Bixby Public Schools library. Second by Tristy Fryer.

Stephens: We now have a motion to affirm the committee's decision that we keep the book titled Me and Earl and the Dying Girl in the Bixby HS Library and it's been seconded. Let's discuss.

Cheatham: Ok, I've got some discussions just among the Board here. Um so we use and I kind of went down the rabbit hole on what obscenity. What's obscene and what's vulgar so freedom of, freedom of speech from what I've been able to research is protected. But when it becomes to something that is obscene it's not necessarily protected. It's kind of a gray area especially when you involve minors and we have it in our policy that we use the community norms for that standard and that's actually one of the things that you have to check off to be obscene, is if the community would find it offensive. Is one of them and the other is if its sexual in nature. I think Me and Earl and the Dying Girl, is not about certain type of ideology. It's not about thought process I love all that. We need to have all different thought processes and stuff available in the school. What concerns me about this book is just the unnecessary obscene parts in the book, that is very detailed and sexual. It goes into detail that we can't even read at a school board meeting and I actually asked some of some of the people if our students would be in trouble if they were caught in a classroom saying quotes that were in the book and the answer was yeah that's not appropriate so it's not appropriate to say in the school talk about. Then I struggle with is it appropriate to read. Um to me the book and the parts of the book that were sexual nature and went into way too much detail did not help the book and it's cause at all. It's it really a shame in my mind because leukemia cancer I have a friend of mine that his spouse has leukemia and I, that's a tough deal. Kids need more books to relate to that type stuff. it's unfortunate that this writer added such graphic sexual content in this book for no, to me it felt like it did not add to the book at all. They could have worded things different and had just the same impact. So my concern is even using our own policies that are norm of our community here in Bixby would not be OK for a majority and I'm not saying there's people out there it's not but if you're talking about the norm I think most of our community people would find it offensive the sexual content that is in this book. This is why I think, now this system kind of changes that. Cuz I'm really not sure how this works. Unfortunately, I wish we could have been, had more time to read through this possible new system that we're gonna have and that makes it a lot tougher cuz on the surface I don't think. I think this book doesn't offer anything to our school. I mean in our policy, we have all this stuff whether you know provides supports our school as in learning or does it provide critical think. I don't think this book doesn't any critical think or thought process that could have

been provided by this book. Unfortunately to me with the obscene language and sexual content kind of took away from that. Even our own committee agreed that it was a very edgy book and on that border. Like the way I read that is that our committee was on the line on that book as well and they even stated that some students in high school might be mature enough. This is a big hang up for me because our policy states that we will, um take into thought the maturity levels of the student served and I agree I think some of our students might be and some parents are OK with their children reading this. But I think if the majority of our community heard or read this book and seeing some of the things that are in it. Especially when talking about going into the oral and it talks about, I don't even know if I can, I don't even know if I can talk about what it talks about that's the problem. It's not a it's not a concept it's not a belief that somebody has it's just the obscene nature that I have a problem. So I'm not even comfortable discussing with the board of the stuff that I had problem with cause I'm not sure that's ok for me to do. That's hard, it's not sitting well with me and this system like I said might that makes it hard cause I just haven't had enough time if I have more time to kind of understand how that works and what it does I might go differently but given the information that we have right now and the amount of information I have on our new system that we're gonna try to implement I'm gonna have to vote no on this specific book and the reason why I am going to vote no like I said it's not based on an ideology that is against mine it's not based on a critical thing that I may not be comfortable with its solely based on the obscene sexual nature of some of the contents in this book.

Stephens: Any other discussions?

Miller: Madam President if I could add to that if Mr. Cheatham would like to have clarification, I think it's appropriate during this discussion if you need clarification on the policy that's being proposed and how that would work and a little bit more detail we can offer that.

Cheatham: So is it a policy that's being proposed?

Miller: Not a policy change, it's the mechanism by which the policy will be implemented.

Cheatham: Ok

Miller:

Danforth: (Heavy Sigh)

Miller: So it gives the parents the right to restrict access of the entire library to their child with the exception of those books that they have researched and selected and placed on hold or reserved for their child.

Cheatham: I'd like to kind of go through and see how easy it is to use. Cuz it sounds like, sounds like it might still be a little difficult unless parents have time to go through our entire library to try and find books.

Fryer: Is there a list? I mean I have seen that there are a list of books that are parent concerns. That parents are wanting to be removed from the library?

Milligan: So our thought process was that most of our kids, especially Elementary and Intermediate they have library participation time right and even secondary they can go between or with their classes. So if I were a parent and I was wanting to have more control I would ask my child to go pick out ten books,

there is also a favorites list. So you can put them in a different hold so that you can just pull out. Then I would have them bring that list back so we could look them up in that library and we would look at reviews and make a decision about if they meet our family beliefs and ideology. That's what I would do if I were a parent instead of going through the whole library. I would let my student still drive that if it were up to me and this is what I was doing because I would want them to have some autonomy over some decisions, particularly when you get into high school right. So then it's very simple, you scroll or you search for that book. You press a button and it immediately says it's on the shelf or not or it's already checked out and you click and it says hold and it immediately flags to the media specialist and pops up on their screen. I've seen it and you open it and it says Jamie Milligan wants to check out and then check it out and the book is waiting for them in the library and it is that simple.

Cheatham: So the parents that don't have access or don't parents don't pay attention to our Facebook and websites and their kid comes home with *Me and Earl and the Dying Girl* and they weren't aware of it and it's too late and they read this this content. That's where I still struggle with that I'd like to see a system that notifies the parent your child has checked out a book and it's this book.

Milligan: Yah and I don't, as far as I know, Mr. Cheatham, the technology that we have available for us in our system right now we don't have a way to do that it doesn't exist as far as I know.

Cheatham: Yah and that's the and I still I'm also torn on it's written in our own policy that we will use the community norms to select books and I feel like our community norm would not appreciate the language in this book.

Danforth: (Heavy sigh)

Milligan: We have two parents that honestly both of them have been very vocal in our school district and so I just want you to know that I picked two parents that I knew would give me their opinion, because they have more than once, about things and one of them actually said to me and this book my son would read. So when we talk about and whether or not it teaches a lesson which it may or may not depending on where you stand but for her she felt like it was a hook for a son that she has a really hard time getting him to participate in reading and it's something that she wanted and I will say this in the committee's defense that we started with the parents and I did that on purpose. I wanted to hear what they had to say before we went to anyone else on the committee so they could speak their mind freely. It was important to me that we really vetted this process and make sure that we were hearing from everyone.

Cheatham: I think our committee did an outstanding job and I, I don't think anything against I'm sure they were very detailed help. Help to us tremendously I think the committee did what they were supposed to do but I still struggle. Two parents or not the majority of our community and that that's tuff because I still think it if you were to put and I've heard rumors that some of the some of the quotes out of this book were put out on the website and that it received. Now I'm not a member of the Facebook page that was put on but and I don't put a whole lot of stock in Facebook but I guess it received a ton of comments of people just appalled. So don't get, I mean I get what you are saying about the committee and I agree. I mean I think the committee did awesome I'm just worried that two people don't really represent the entire community. I still feel like myself and I've talked to multiple, I mean I've taken this very seriously I've talked to English teachers that are outside of our district and other school districts. I have family members that are English teachers I've reached out to all of them. I've reached out to

multiple people and I don't believe that our community as a whole or as an average would agree. They would find this language that was used in this to be too vulgar and obscene. So that is where I struggle.

Fryer: I've read the book the language is not comfortable for me. Not something I would use in my day today but I looked at the book as having a purpose. Definitely definitely uncomfortable I would hope my kids would not but I've, I feel like a parent ownership that's it that parents decision and just like a parent can opt out of a assignment for a chapter book if it's an English class is that correct they can still opt out have an alternative assignment? Is that still correct Ms. Milligan?

Milligan: Yes

Fryer: and so with this I think Matt talked about this it's a slippery slope of where, I mean a few years ago it was to remove Doctor Seuss books in our libraries and then this one there's some uncomfortable things. But if we give, I believe so much in parent, parent ownership. Then if they get to make these decisions for their kids they get to have that voice in there and, and again there are some parts of the book I don't know why the author wrote it. There's some things I scratched my head too.

Milligan: so I want to clarify because there are media specialist behind me and there is a way for us to notify about daily checkouts that I was unaware of. So I don't know anything about that but.

Cheatham: So just quick question, we've had some back and forth talks with um Mrs. Milligan can we have some of that with her as well?

Stephens: Sure

Miller: If you have follow up questions of course.

Cheatham: You mentioned a couple of laws online too and I looked up some of these laws online too. I found one that you didn't mention that basically stated that something that was obscene, um especial with minors is not protected under freedom of speech.

Danforth: Right

Cheatham: You hit on that a little bit.

Danforth: I did

Cheatham: I'm kind of curious what your research found on just and were just talking about me Earl and the Dying Girl. Even you are aware, you have read the book

Danforth: yes

Cheatham: You are aware of the language in there and it's not the language necessarily because that's just language. I'm more concerned about the detailed way too much detail and lack of better terms kind of dirty and perverted language.

Danforth: Right

Cheatham: What did you find as far as the law goes? Sound like you did some research. I'm just kind of curious here.

Danforth: Yeah I mean

Cheatham: With follow up on that real quick, what are your thoughts now that you've seen this with us on the new system?

Danforth: Thank you for allowing um my thought. So the me Earl and the Dying Girl in our first meeting I read that book um and I even said to them that it's unfortunate he's a fun writer and he has a good way bringing you in. Like you said that parent liked it. It was unfortunate he had to go that route. What he did because I felt he had the potential to draw students into wanna read which we know a lot of them don't like to. I my youngest son hates it so um, but yeah the law that case the School Board versus Pecoe. Really hits home that, that vulgarity and obscenity is not protected in this book to me it is filled with it. And like you said there is no, even though it's about cancer there is so much that takes away from that message and that's not the message, that's not the reason I want it removed. I think its fantastic to have a book, that's said, if he wrote this differently even with a few curse words in it, it would be like this is a great book. But there are populations, you know, we're naïve sometimes we look at how we do things and I've learned that over the last four months, I've learned a lot over the last four months. And I tended to do that myself looking in your own box where you sit and look at everything from that lens. But we have a population here and every school district does that, doesn't have parents that look out for their child, that's the reality. And there are parents who are just too busy to notice or care about a book. I never did, I never thought that that was an issue until recently. And so to to just like do this where, where I think there's potential here but I still think there's a lot of holes in it. It's limiting that parent that's not paying attention or the child who doesn't have a parent that is involved or cares what they're doing. So now they have access to this book which is filled with perversity I mean it's so awful what's in there I mean that amount of words that are used in the PUSS you know, it's like why do we want these in, these are children I'm just gonna keep going back to that these are minors these aren't adults they're not thinking like adults. Their thinking like children and that is molding their thought process and is that how we want to mold them moving forward. Is by these are the thoughts that are coming in and now they're going to be moving forward on that. So for a student that doesn't have a parent that's gonna do this you're still allowing them access. So it limits that ability and my one question on this and I might not of understood so that was my one question was, so they have to opt in and opt out I mean good books and bad books the parent has to decide?

Milligan: The parent has full control.

Danforth: But I'm saying if my son goes in and say I say OK these two books, I'll just use these I put on I don't want my kid checking these out because I have to do because I have to choose all the books right so he can't just go in and have freedom to look for other books.

Milligan: Parents would have full control.

Danforth: But I'm saying if my son goes in and say I say these two books. I'll just use these. These two books I don't want my children checking these two books out. But because I have to, I have to choose all of the books right? So he can't just go in and then have freedom to look for other books.

Milligan: Correct you would have to

Danforth: That's not fair to this kid because I don't like these two books or five books that now he doesn't even have access to go find the good books.

Cheatham: So I didn't even think of that but so are you saying just to be clear are you saying that you feel like this system might actually restrict our children more of having access to books.

Danforth: Yes she just said, you have to choose the good and the bad. You have to choose what books they can check out they don't just have you can't say I don't want these books then they can go get the others they're limiting what they have access to completely and that's not OK it's just not.

Cheatham: This is tough because I mean none of us want none of us want to kick a book out of the library none of us want to be a book banner or book burner at all.

Danforth: No

Cheatham: That's the furthest thing, at least me I can't, I don't want to speak for everyone on the board but I'm pretty confident of that. But for me I definitely don't want to, I don't want to fall into a trail of hey I don't agree with this ideology or I don't agree with this thought process of something that may have a history or that's not what I wanted to go down but this is to me this decision on this book is based solely on the vulgarity and obscenity in its sexual nature. I mean period for me.

Miller: Let me just make a quick comment to remind the board that we're actually looking at the motion to affirm this book remains in circulation. The procedures that Ms. Milligan just shared with you today are based on our work with media specialist up to this. As she indicated we recognize that there may be some holes in this and we may need to tweak this as we move forward which is why it's not a policy it's more of a procedure. We recognize that Mrs. Danforth and other parents in our community should have more autonomy in the selection of materials that their child can access in our libraries. what you're getting at Mrs. Danforth and I'll just refer to that if a parent chooses my child just can't go into the library and check out a book but they can go in and say here are some books that I want. Text his parent and the parent could actually review those if they had time and then flag those books and say yes and so that they can direct or approve every book that the child wants. So the child still has full access to that library but it has to be filtered by the parent who says yes that book is OK and that book is not OK and so it's that communication between parent and child but I recognize Mrs. Danforth's concern about what about those students who don't have a parent who's going to exercise that autonomy and so that's that's a decision again in front of the board and based on the facts that have been presented today and the discussion that you have. The decision whether to affirm or not to affirm this book is really the topic at this point.

Danforth: So we don't want to censor one book but you're willing to censor all of them?

Cheatham: Well this keep on

Danforth: Well that's what you are doing here.

Fryer: But is it censorship of the voice of the parents the opinion of the parent.

Miller: It's the parent doing that, the parent can say

Danforth: No that's you saying that I now have to because I don't want my kid to read four books now he has no access to check any of them out, that's censoring. you're now doing what I'm saying and you're doing it in mass.

Miller: Again Ms. Danforth I was reminding the board that this special meeting was

Danforth: Ok well I'm just reminding them as well.

Miller: on these books the policy or the procedures that are set forth by our policies are still open to debate and discussion.

Danforth: Ok

Miller: And that can happen after this meeting.

Cheatham: But yeah, I kind of feel like we're getting off base on this policy here, and that's what the policy is not set. Like you said we can still make a lot of changes. That makes it

Stephens: On the Procedure

Cheatham: On the procedure not policy. So that makes it hard. I'm going to have to vote on just the book alone. Because we're still not sure what this exactly looks like. I love this, I love you guys, I have nothing but faith you guys will come up with an awesome deal like our administration always does 'cause you guys are rock stars but for me for now I'm gonna have to vote just specific on this book.

Miller: And again, I don't want to labor the point but these procedures were implemented or recommended in recognition of the concerns that Mrs. Danforth brought to us and I told her at the time that I applauded her courage and conviction in stepping forward with a passion and in a very polite respectful way and entering these conversations. So what we're doing as a district is trying to recognize that we do have books on our shelves that maybe objectionable to some parents but that community norm is so difficult to measure depends on who you're talking to in our community and so as a means of recognizing that a parent should and we want to partner with parents and making sure they have control over what their child has access to in our libraries. We recommended these policies or procedural changes as a start it doesn't have to be this it can go to more review but it was just an example of recognition that yes this is something it's in our policy and we are making sure we've got a mechanism that affords parents that right to be able to make those choices.

Stephens: Did you have something?

Dotson: yeah I just want to discuss that our First Amendment rights are critical for us to observe, uh like I said creating a slippery slope or opening Pandora's box here to evaluate all literature in our schools is is not a precedent I really want to set in this vote. Um just some thoughts here I wrote out on this book specifically is, how would a committee of 9th graders view it. If a committee of and I've heard I've heard several say dad why are you reading that? I put that down or I wouldn't want my kid to read this. You know a committee of adults compared to an actual student committee who would possibly read that could be drastically different in the perception just a thought. That's uh that's uh and then how does, when is the measure of decency and common sense involved in an evaluation. As a person in our community I know as a parent, I know all of our administrator all of our district, we care about decency and we care about you know this gets back to some of those issues about canceling things and getting things out like a lot of stuff a lot of stuff is just common sense just doesn't like it's common sense. Like why would you keep that in your school and I'll say on 1st amendment banning a book or getting rid of a book we have liaisons that are scanning books who are deciding yes or no on books. So they're deciding right? Like our staff is deciding what gets in our libraries and what doesn't and we're being asked now as a board as a group of parents to kick a book out of our library that is vulgar in nature. So I'm just

asking myself these questions where does decency and common sense come into play on these? This book specifically like Justin keeps saying. I'm trying not to get wrapped up in the down the road view but those are just things I've been thinking you know I think I think a group of 9th graders might evaluate the book a little differently than a group of adults or a group of Sophomores.

Miller: I just want to clarify is the book Me and Earl and the Dying Girl is only at the high school?

Milligan: Correct.

Dotson: Its not, I'm sorry, 9<sup>th</sup> grade

Miller: I just want to clarify that.

Danforth: It was though, it was in the 9<sup>th</sup> grade

Cheatham: Can I, what does she mean it was?

Milligan: It was'nt

Danforth: It was, just ask Linda Ricks. it was.

Miller: It was my understanding that 13 Reasons Why was on the shelf

Danforth: They both were there.

Cheatham: Hold on

Milligan: 13 Reason Why was reported in both libraries Me and Earl and the Dying Girl was only in circulation at the High School.

Danforth: No that's not true cause I approached her about both of them.

Dotson: I was just saying 9<sup>th</sup> grader as a grade.

Danforth: No I know you, I know what your point was

Dotson: I wasn't specifically honing in on 9<sup>th</sup> Grade. I was just saying if we had a committee of high schoolers

Danforth: 10<sup>th</sup> grade

Dotson: Let's just say that,

Danforth: I know what you meant.

Dotson: you know how would they view the vulgarity of the book

Cheatham: Can I get clarification, I've read it and I was just curious. I know can I get some clarification, if say we were to vote to remove this book. We have clauses where it could come back in a certain amount of time is that correct?

Miller: No, I think the policy says three years in the district based on the decision you make tonight whether it's to affirm or not to affirm that decision is final for three years.

Cheatham: So at three years the book could come back? The reason I ask is I'm just trying to think in three years a book could come back if we had all the all of our new system that we're kind of entertaining. All of the kinks worked out of that system and it was working great, you could technically bring it back in three years.

Milligan: You can bring either one of these back after three years whether we have this in place or not according to policy.

Dotson: Do we have any type of internal grading system on books? I mean I know we have so many but we are, but we use

Milligan: It's not a popular opinion but I will say that common sense media does pull out things and rate them so you can look at it for foul language or any of those things you would think about. I always think about movies in relation that it does break those down and so it's the only one, its one of the reasons that I wanted it there. You could pull the book up and see your rating and then you could go to other sources if you wanted to read more about that but it does breakdown a some what rating system based on those things that you might think in your mind should be flagged.

Dotson: I just think if you check the book out you know I get a notification, you know I I'm, am I gonna like will you just get the title of the book or would you get like, would I have to go and resource?

Stephens: You would have to go and resource

Dotson: I would have to go and resource?

Milligan: m-hmm, I don't know of any method.

Dotson: Yah

Cheatham: But there's no notification correct at this point?

Milligan: No actually they told me, remember the media specialist behind me.

Dotson: Yah

Fryer: There is a notification, you can have a notification that your kids are checking out

Dotson: Yah

Cheatham: Oh Ok

Milligan: They corrected me

Cheatham: It's just this new system

Fryer: It's not new, that parts not new

Cheatham: Oh it's not?

Milligan: They corrected me, I was not aware and they corrected me.

Cheatham: OK so could you restate that

Milligan: Yes, so my understanding and I have not seen it so, that it can notify you of books that have been checked out. My guess is that it is its own standalone system and they are the experts in that system.

Danforth: So can I just say why are we allowed to just bring in information that's beyond what we were supposed to be talking about today? I don't have someone sitting behind me giving me tips on what else to say. This is bull, this is so tainted

Stephens: This is relevant for

Danforth: Of course its relevant on what

Stephens: I wanna hear everyone side. I mean, I appreciate everyone's point of view on this.

Danforth: Well so do I. But I think getting, we are here, she was granted 15 minutes and so was I. No one else is allowed to speak but she's allowed to hear from someone that works at the school and then say what it is. I don't have someone texting me behind here saying, oh say this, say that.

Stephens: She was asked a specific question

Danforth: I'm just making a note

Stephens: We are trying to be as thorough as we can on this point.

Cheatham: But this is a tough tough tough decision 'cause no, like I said I don't wanna be kicking books out of the library but I do hear what you are saying it just seems like the information is changing as we go along.

Danforth: That's not fair

Cheatham: That's why

Danforth: It's just not

Cheatham: That's why I am going to have to vote no on this one.

Miller: and again that's the, that's the motion in front of the board. This discussion is ancillary and it really again in recognition of our policy and parents request to have more authority. That process would be to better define. We will have additional meetings and we'll be happy to prove the board at a later date on some of those changes based on the questions you've asked us tonight.

Dotson: I just wanna be clear, a vote for me is a vote in disagreement with the selection of the book. Not an impression of the first, our First Amendment rights.

Cheatham: can you just elaborate on that?

Dotson: I can disagree with the fact that our book was selected for our library.

Cheatham: Oh ok

Dotson: That's what I'm voting on. If you wanna go if you wanna go check the book out I mean that's we can disagree with that as parents right? Like we can disagree with that book was selected, you know and again I'm for me personally I'm gonna have to going to have to vote no because of the just the lack of

decency and common sense and like it just doesn't make sense to have our students exposed to that. If this was in a pornographic magazine we wouldn't allow it in our schools right? like how was it different? It's very vulgar you know and anyways.

Stephens: Any other discussions?

**2021-2022**

**CERTIFIED PERSONNEL**

**EMPLOYMENT**

Janet Smith	Science Teacher	Eff. 2/28/2022 High School
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**TEMPORARY CONTRACT**

**VIRTUAL COURSE TEACHER**

**RESIGNATION AGREEMENTS**

Debra Arledge	Math Teacher	Eff. 5/20/2022 High School
Amanda Baldwin	7th Grade Science	Eff. 5/20/2022 Middle School
Sandra Benefield	8th Grade Science	Eff. 05/20/2022 Middle School
Kathy Blair	Media Specialist	Eff. 5/20/2022 Middle School
Cindy Delay	Elementary Teacher	Eff. 5/31/2022 North Elementary
Sam Fairchild	Health Ed	Eff. 5/20/2022 High School
Letha Flippin	Counselor	Eff. 5/20/2022 North Elementary
Audrey Graves	Special Education	Eff. 05/20/2022 Middle School
Nicole Smithey	Elem. Teacher	Eff. 5/20/2022

## **SUPPORT PERSONNEL**

### **EMPLOYMENT FOR THE 2021-2022 SCHOOL YEAR**

**SUBJECT TO JOB ASSIGNMENT BY THE SUPERINTENDENT**

Rick Castaldi	Maintenance	Eff. 3/8/2022 District Wide
Ana Bustamante	Custodian	Eff. 3/2/2022 High School
Samantha Garnica	Paraprofessional	Eff. 2/15/2022 West Elementary
Jason Grove	Maintenance	Eff. 3/7/2022 District
Kimberley Haithcock	Child Nutrition	Eff. 3/10/2022 Middle School
Lainey Embry	Paraprofessional	Eff. 3/7/2022 West Elementary
Neenu Ponygayil Kochukutton	Playground Aide	Eff. 2/14/2022 Central Elementary
Paula Mace	Paraprofessional	Eff. 3/1/2022 North Elementary
Stephanie Oden	Paraprofessional	Eff.
Brittany Sanders	Principal's Secretary	Eff. 3/7/2022 East Intermediate
Jennifer Scire	Paraprofessional	Eff. 1/26/2022 High School
Evelin Silva	Paraprofessional	Eff 2/16/2022 North Elementary
Jasmine Weeks	Child Nutrition	Eff. 2/14/2022 North Intermediate

### **TEMPORARY EMPLOYMENT**

### **VOLUNTARY COACHING**

**Liezel Spinks**

**Asst Winterguard Teacher**

**SUPPORT PERSONNEL  
RESIGNATIONS**

Rebecca Birdsall	Food Service Assistant	Eff. 3/3/2022 West Elementary
Marjorie Johnson	Paraprofessional	Eff. 02/18/2022 West Elementary
Ed Maxwell	Bus Driver	Eff. 2/11/2022 District Wide
Fahad Mohammad	Paraprofessional	Eff. 3/8/2022 East Elementary
Lisa Ramirez	EL Paraprofessional	Eff. 3/29/2022 East Elementary
Jordan Vermeire	Paraprofessional	Eff. 03/11/2022 West Elementary

**TERMINATION**



# AIA® Document A133™ – 2019

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

**AGREEMENT** made as of the 10<sup>th</sup> day of March in the year 2022  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:

Bixby Public Schools  
109 North Armstrong  
Bixby, OK 74008

and the Construction Manager:

CMSWillowbrook, Inc.  
1637 S. Boston Ave.  
Tulsa, OK 74119

for the following Project:

Bixby West Expansion  
14901 S. Harvard Ave  
Bixby, OK 74008

The Architect:

KKT Architects, Inc.  
2200 S. Utica Place, Ste. 200  
Tulsa, OK 74114

The Owner and Construction Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

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

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**User Notes:**

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### ARTICLE 1 INITIAL INFORMATION

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

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

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

Bond Proposition, voted on February 8, 2022, for West Elementary | Intermediate expansion

§ 1.1.2 The Project's physical characteristics:

Project characteristics will be identified on the construction documents prepared by KKT Architects.

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

The proposed estimate is \$7,900,000.00

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

.1 Design phase milestone dates, if any:

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Construction Documents anticipate to complete March 2022.

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

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

TBD

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

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

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

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

Gabe Hayes  
[gahayes@bixbyps.org](mailto:gahayes@bixbyps.org)  
918-366-2200

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

KKT Architects, Inc.  
Sarah King  
[Sarah.king@kktarchitects.com](mailto:Sarah.king@kktarchitects.com)  
918-744-4270

§ 1.1.10 The Owner shall retain the following consultants and contractors:

.1 Geotechnical Engineer:

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.2 Civil Engineer:

Cedar Creek Consulting, Inc.  
Contact: Jason Emmett  
PO Box 14534  
Oklahoma City, OK 73113  
[jemmett@cedarcreekinc.com](mailto:jemmett@cedarcreekinc.com)  
405-778-3385

.3 Other, if any:

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

§ 1.1.11 The Architect's representative:

KKT Architects, Inc.  
Contact: Sarah King  
2200 South Utica Place, Suite 200  
Tulsa, OK 74114  
[Sarah.king@kktarchitects.com](mailto:Sarah.king@kktarchitects.com)  
918-744-4270

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

CMSWillowbrook, Inc.  
Contact: Brenna Wells, Project Manager  
1637 S. Boston Ave.  
Tulsa, OK 74119  
[Brenna.wells@cmswillowbrook.com](mailto:Brenna.wells@cmswillowbrook.com)  
C: 918-995-1791

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

Bryan Miles, Project Director  
Erik Williams, Estimator  
Mary Roberts, Preconstruction Manager  
Cristy Callins, Vice President of Preconstruction

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

Per State Statutes

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

Structural Engineer:  
KKT Architects  
Contact: Jim Geurin

MEP Engineer:  
HP Engineering  
Contact: Nick Whitchurch  
16 South Lewis Ave  
Tulsa, OK 74104  
[nwhitchurch@hpengineeringinc.com](mailto:nwhitchurch@hpengineeringinc.com)  
918-895-6510

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

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

### § 2.3 General Conditions

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

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The

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Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

**§ 3.1.3 Consultation**

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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.

**§ 3.1.4 Project Schedule**

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

**§ 3.1.5 Phased Construction**

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

**§ 3.1.6 Cost Estimates**

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

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

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

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

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

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

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

**§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

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

**§ 3.1.12 Procurement**

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

**§ 3.1.13 Compliance with Laws**

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

**§ 3.1.14 Other Preconstruction Services**

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

**§ 3.2 Guaranteed Maximum Price Proposal**

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

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

### § 3.3 Construction Phase

#### § 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

### **§ 3.3.2 Administration**

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

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

### **§ 3.3.2.3 Monthly Report**

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

### **§ 3.3.2.4 Daily Logs**

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

### **§ 3.3.2.5 Cost Control**

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

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

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

**§ 4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

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

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and

contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

**§ 4.2 Owner's Designated Representative**

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

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

**§ 4.3 Architect**

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

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

**§ 5.1 Compensation**

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

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

NA

**Individual or Position**

**Rate**

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

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

#### § 5.2 Payments

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

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

All payments per State Statutes

### ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

#### § 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

5% of the Final Construction Cost

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

5%

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

10% Overhead + 5% Profit = 15% total

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ( 100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

NA

§ 6.1.7 Other:

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

#### § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

#### § 6.3 Changes in the Work

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

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

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§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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

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

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

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

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

The following personnel will be involved on this project, but not located onsite. Wages or salaries are included in the GMP:

- Principal-in-Charge
- Project Director
- Contract Administrator
- Project Accountant
- Safety Director
- Other Support Staff

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining

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agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

### § 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

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

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

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

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

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

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

### § 7.6 Miscellaneous Costs

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

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

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

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

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

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

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

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

#### § 7.7 Other Costs and Emergencies

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

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

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

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

#### § 7.8 Related Party Transactions

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

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

### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

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

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

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

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

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the

Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

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

#### **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

##### **§ 11.1 Progress Payments**

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

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

As per State Statutes

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( 30 ) days after the Architect receives the Application for Payment.

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

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

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

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the

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Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

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

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

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

#### § 11.1.8 Retainage

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

Per State Statutes

§ 11.1.8.1.1 The following items are not subject to retainage:

General Conditions and Requirements, Insurance, Bonds, Permit fees

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

Per State Statutes

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

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

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

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

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

## § 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

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

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

Per State Statutes

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

§ 11.3 Interest

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.

NA

**ARTICLE 12 DISPUTE RESOLUTION**

§ 12.1 Initial Decision Maker

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

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

Owner's Representative

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: (Specify)

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

**ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without

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cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

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

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

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

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

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

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

### § 13.2.1 Termination

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

### § 13.2.2 Termination by the Owner for Cause

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

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

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is

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not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

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

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

In the amount the construction manager has expended on the project at the date of the termination.

**§ 13.3 Suspension**

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

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

**§ 14.2 Successors and Assigns**

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

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

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

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

**§ 14.3.1.1** Commercial General Liability with policy limits of not less than (\$1,000,000.00) for each occurrence and (\$2,000,000.00) in the aggregate for bodily injury and property damage.

**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$1,000,000.00) each accident, (\$1,000,000.00) each employee, and (\$ ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$1,000,000.00 ) per claim and (\$1,000,000.00) in the aggregate.

#### § 14.3.1.6 Other Insurance

Coverage	Limits
Personal & Advertising Injury	\$1,000,000.00
General Aggregate	\$2,000,000.00
Products-Completed Operations Aggregate	\$2,000,000.00
Builders' Risk	TBD based on project details

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

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

#### § 14.3.2 Construction Phase

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

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

§ 14.5 Other provisions:

### ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 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 Other Exhibits:  
(Check all boxes that apply.)

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.7 Other documents, if any, listed below:

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

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

\_\_\_\_\_  
Board of Education, President (or designee)  
(Printed name and title)

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

\_\_\_\_\_  
Weston DeHart, President  
(Printed name and title)

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Sherry McIntyre <smcintyre@bixbyps.org>

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## Surplus Vehicle

1 message

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**Adrienne Malone** <amalone@bixbyps.org>  
To: Sherry McIntyre <smcintyre@bixbyps.org>

Mon, Feb 28, 2022 at 10:33 AM

We want to surplus the 2008 Dodge Quad Cab (VIN# 3D7MX38AX8G124253). This vehicle is mechanically unreliable.

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**Adrienne Malone**  
**Maintenance Office Manager**  
Bixby Public Schools  
918-366-2386

