

Board of Education Regular Meeting

January 13, 2020 7:00 PM

District Board Office, Central Services  
Building  
14801 South 108 Street  
Springfield, NE 68059-4925

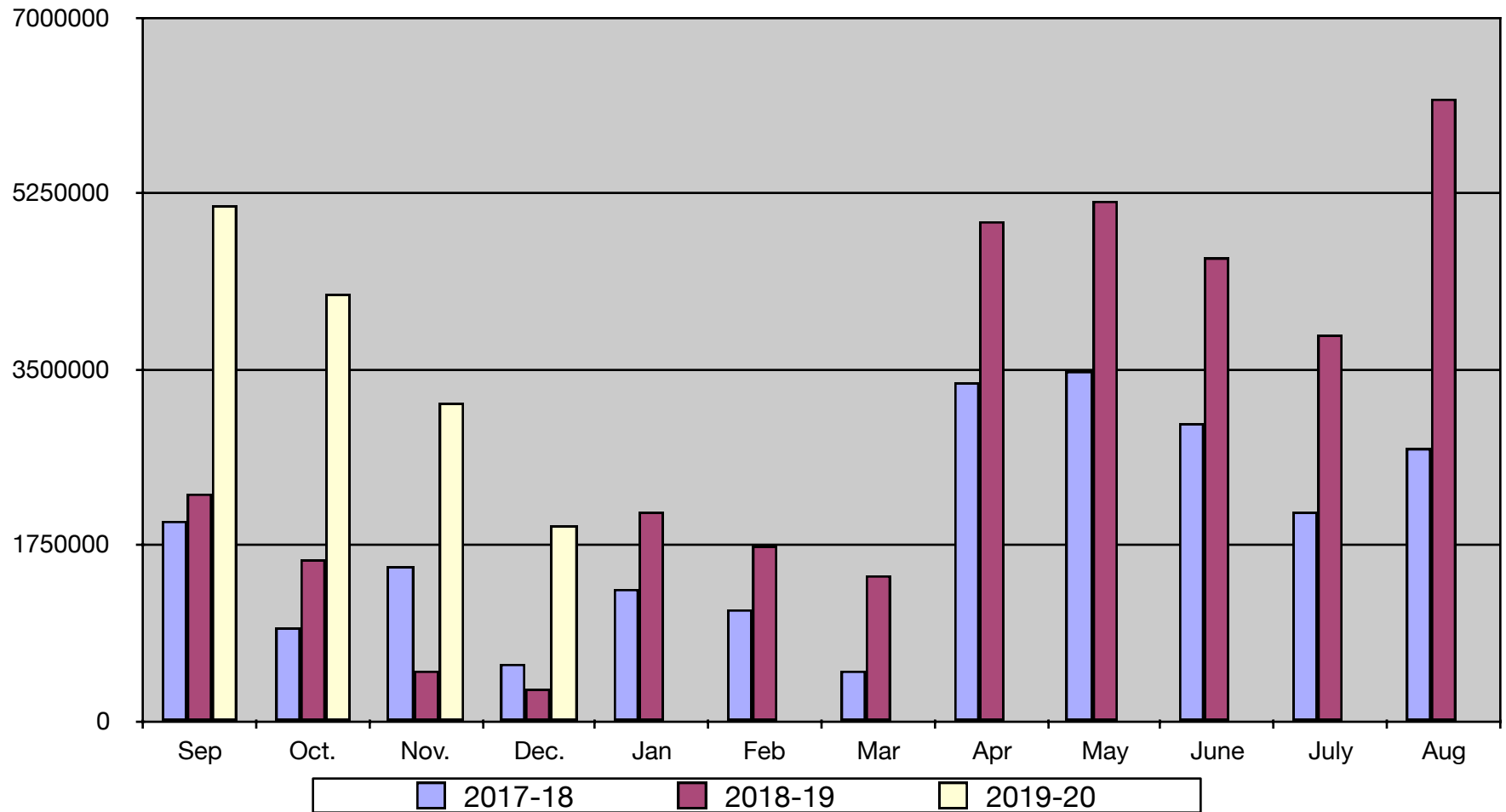
**Agenda**

- I. Finance Committee Meeting
- II. Call to Order and Roll Call
- III. Notice of Open Meetings Act - Posted
- IV. Board Reorganization
  - A. Nomination and Election of Board President for 2020
  - B. Nomination and Election of Vice President for 2020
  - C. Nomination and Election of Secretary for 2020
  - D. Appoint School District Treasurer for 2020
  - E. Appoint Standing Committees for 2020
  - F. Appoint SPCS Education Foundation Board Members for 2020
  - G. Designate Legal Publication for 2020
  - H. Designate Financial Institution 2020
  - I. Appoint M.A.B.E. Representative for 2020
  - J. Review Conflict of Interest Policies
- V. Items from Patrons
- VI. Consent Agenda
  - A. Minutes of the Previous Month's Meetings
  - B. Treasurer's Report
  - C. Statement of Activity Fund Accounts
  - D. Recommendation for Bill Payment
- VII. Old Business
  - A. Discuss, consider and take all necessary action with regard to the construction manager at risk agreement between the School District and Boyd Jones Construction Company for the proposed construction of a new elementary school facility and renovations to the Westmont Elementary school building projects.
- VIII. Reports
  - A. Student and Staff Successes
- IX. Advance Planning
- X. Executive Session
- XI. Adjourn

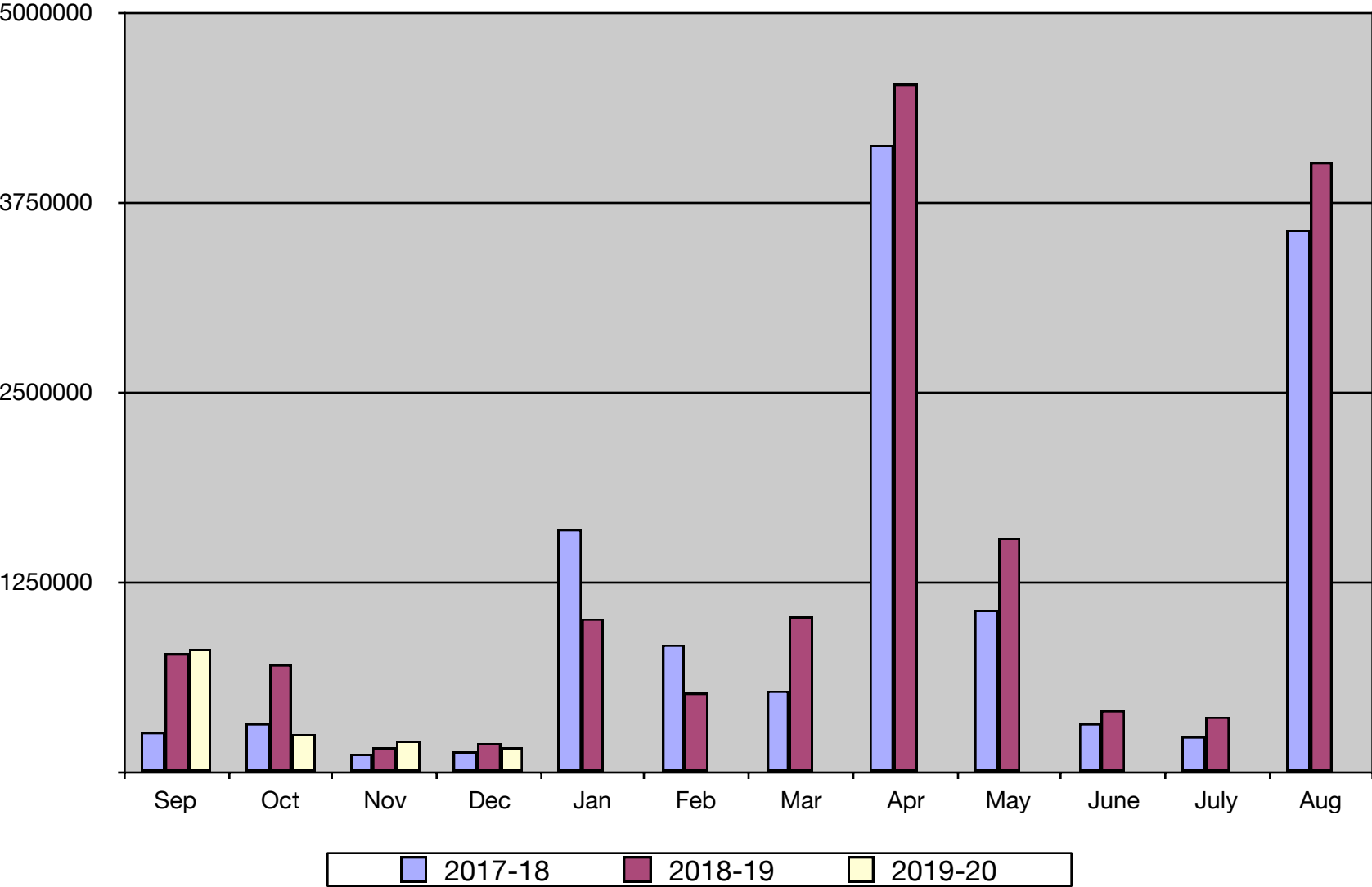
# CASH COMPARISONS as of Nov. 30, 2019

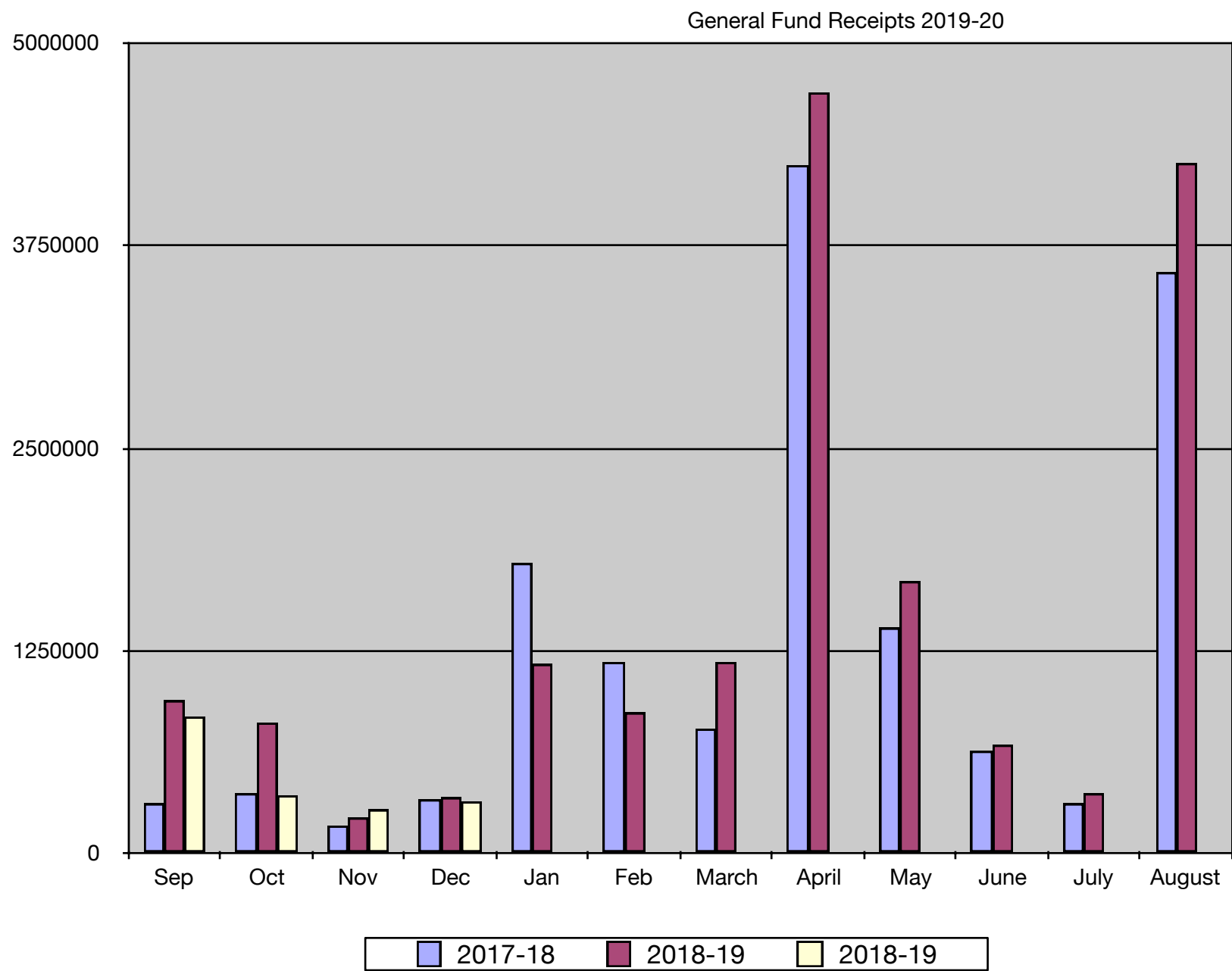
			2017-18	2018-19	2019-20
	<b>September</b>	General Fund	\$ 1,984,435.00	\$ 2,458,575.19	\$ 5,334,717.04
		Emp. Benefit Fund	\$ 373,347.00	\$ 199,836.30	\$ 174,997.16
		Building Fund	\$ 2,787,239.00	\$ 2,805,118.81	\$ 577,739.70
		School Lunch	\$ 129,072.00	\$ 133,359.61	\$ 139,861.46
		Bond Fund	\$ 525,632.00	\$ 454,312.03	\$ 458,291.29
		Depreciation Fund	\$ 91,134.00	\$ 37,506.87	\$ 72,566.54
		QCPUF	\$ 221,929.00	\$ 271,993.66	\$ 305,467.95
		Sept. Total	\$ 6,112,788.00	\$ 6,360,702.47	\$ 7,063,641.14
	<b>Oct.</b>	General Fund	\$ 936,121.47	\$ 1,621,236.98	\$ 4,256,601.00
		Emp. Benefit Fund	\$ 373,274.85	\$ 199,854.37	\$ 175,019.00
		Building Fund	\$ 2,203,061.95	\$ 994,589.43	\$ 428,208.19
		School Lunch	\$ 170,382.95	\$ 163,844.95	\$ 144,832.34
		Bond Fund	\$ 527,423.08	\$ 471,948.89	\$ 460,843.01
		Depreciation Fund	\$ 74,495.31	\$ 37,510.26	\$ 72,575.78
		QCPUF	\$ 223,870.95	\$ 304,238.05	\$ 308,094.65
		Oct. Total	\$ 4,508,630.56	\$ 3,793,222.93	\$ 5,846,173.97
	<b>Nov</b>	General Fund	\$ 1,539,467.00	\$ 505,607.00	\$ 3,159,199.26
		Emp. Benefit Fund	\$ 2,514.00	\$ 199,878.00	\$ 175,040.31
		Building Fund	\$ 546,625.00	\$ 849,413.00	\$ 446,454.62
		School Lunch	\$ 189,617.00	\$ 171,381.00	\$ 142,358.75
		Bond Fund	\$ 431,167.00	\$ 384,945.00	\$ 25,770.32
		Depreciation Fund	\$ 2,503.00	\$ 37,515.00	\$ 72,584.43
		QCPUF	\$ 2,767.00	\$ 70,668.00	\$ 2,669.01
		November Total	\$ 2,714,660.00	\$ 2,219,407.00	\$ 4,024,076.70
	<b>December</b>	General Fund	\$ 569,962.77	\$ 332,183.72	\$ 1,941,565.70
		Emp. Benefit Fund	\$ 2,514.03	\$ 174,800.94	\$ 175,063.00
		Building Fund	\$ 473,914.00	\$ 207,617.86	\$ 442,522.00
		School Lunch	\$ 118,906.62	\$ 111,709.00	\$ 140,442.00
		Bond Fund	\$ 13,770.34	\$ 37,145.27	\$ 26,484.00
		Depreciation Fund	\$ 2,502.75	\$ 37,519.41	\$ 72,594.00
		QCPUF	\$ 3,928.22	\$ 5,563.74	\$ 3,321.00
		December Total	\$ 1,185,498.73	\$ 906,539.94	\$ 2,801,991.70

General Fund Balance 2019-20

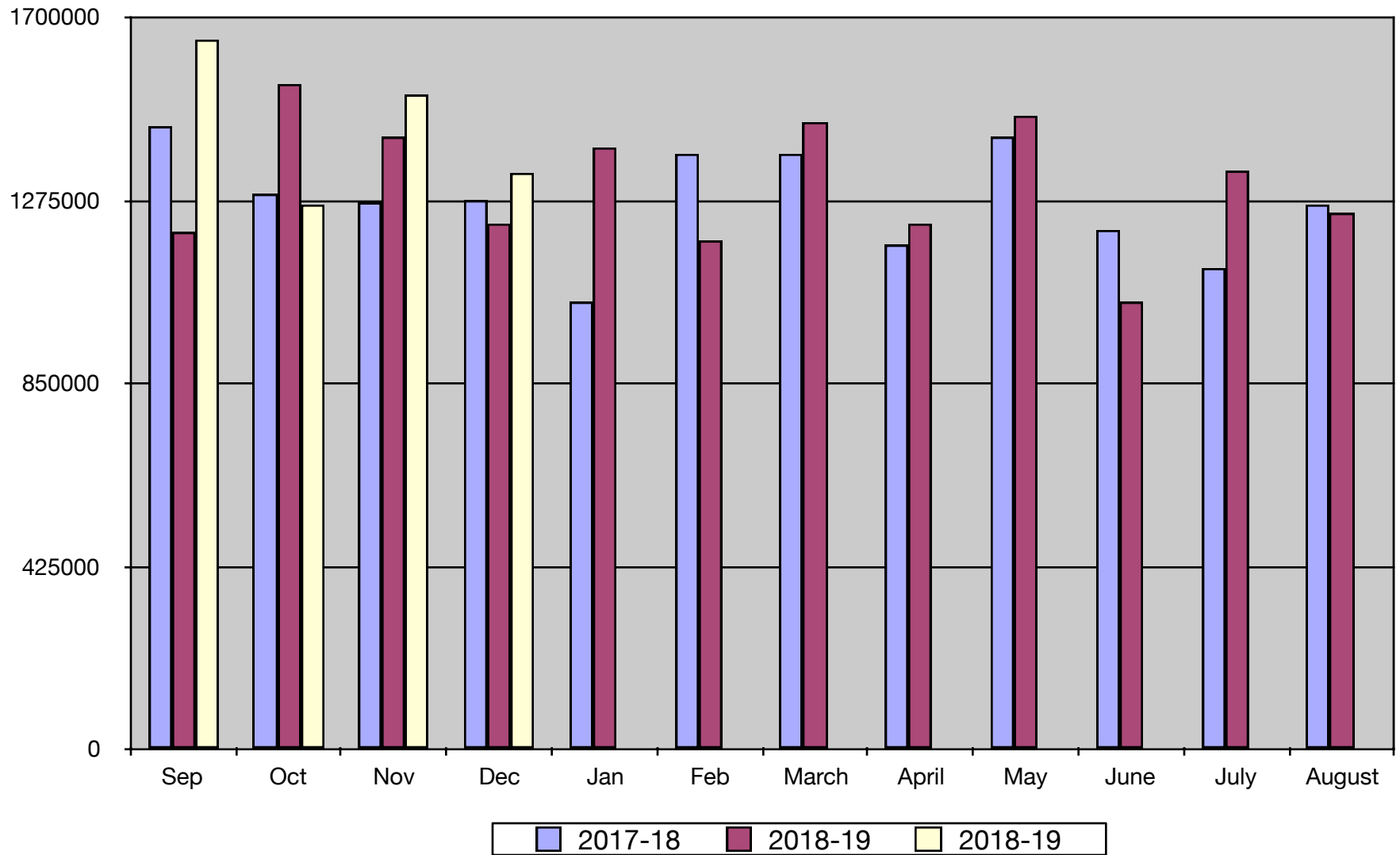


General Fund Tax Draws 2019-20





General Fund Expenses 2019-20



Balance as of last day of the month			
Month	2017-18	2018-19	2019-20
September	1,984,435	2,262,784	5,146,012
October	936,121	1,621,237	4,256,601
November	1,539,467	505,607	3,159,199
December	569,963	332,184	1,941,566
January	1,317,686	2,074,009	
February	1,108,010	1,753,972	
March	492,422	1,457,617	
April	3,370,417	4,986,650	
May	3,495,774	5,189,232	
June	2,957,802	4,622,005.9	
July	2,082,418	3,843,444	
August	2,726,141	6,204,289	
<b>Tax Draw</b>			
Month	2017-18	2018-19	2019-20
September	276,440	794,849	811,549
October	326,128	710,175	252,712
November	132,012	167,822	209,289
December	147,813	203,071	177,342
January	1,605,719	1,020,166	
February	850,222	527,109	
March	551,197	1,034,931	
April	4,141,618	4,537,279	
May	1,081,821	1,547,306	
June	323,240	419,632	
July	240,789	367,067	
August	3,569,340	4,024,777	
TOTALS	13,246,339	15,354,184	1,450,892
<b>Receipts</b>			
Month	2017-18	2018-19	2019-20
September	303,673	933,659	835,820
October	363,527	800,221	346,905
November	157,941	218,493	266,213
December	321,937	342,310	309,966
January	1,786,926	1,161,150	
February	1,172,567	861,570	
March	765,540	1,176,426	
April	4,250,577	4,695,060	
May	1,388,936	1,676,490	
June	630,658	665,861	
July	303,192	369,171	
August	3,583,648	4,266,167	
TOTALS	15,029,122	17,166,578	
<b>Expenses</b>			
Month	2016-17	2017-18	
September	1,447,001	1,203,738	1,646,988
October	1,290,069	1,546,444	1,265,293
November	1,271,215	1,423,600	1,522,015
December	1,276,574	1,221,604	1,340,222
January	1,039,562	1,399,770	
February	1,381,656	1,184,238	
March	1,382,093	1,458,853	
April	1,172,798	1,220,185	
May	1,421,208	1,472,957	
June	1,209,278	1,037,630	
July	1,116,789	1,344,436	
August	1,266,339	1,247,098	
TOTALS	15,274,582	15,760,553	5,774,518

## **ELECTION OF OFFICERS AND APPOINTMENTS FOR 2020**

1. Nominations for President (2019 President - Cori Swanson)  
I nominate \_\_\_\_\_ for 2020 Board President.
2. Nominations for Vice President (2019 Vice-President – Lisa Roseland)  
I nominate \_\_\_\_\_ for 2020 Board Vice-President.
3. Nominations for Secretary (2019 Secretary –Brenda Sherman)  
I nominate \_\_\_\_\_ for 2020 Board Secretary.
4. School District Treasurer: Brett Richards (2019 Treasurer – Brett Richards)  
Recommendation: Move to appoint Brett Richards as School District Treasurer for 2020.
5. Appoint members to Standing Committees:  

(2019 Committees)	(2020 Committees)
<u>FINANCE</u> Brenda Sherman (chair) Kyle Fisher Bob Icenogle	<u>FINANCE</u>
<u>AMERICANISM (CURRICULUM)</u> Cori Swanson Kyle Fisher Bob Icenogle	<u>AMERICANISM</u>
<u>EVALUATION/ BOARD GOALS</u> Lisa Roseland (chair) Brenda Sherman Cori Swanson	<u>EVALUATION/ BOARD GOALS</u>
<u>SITE</u> Brian Osborn (chair) Lisa Roseland Cori Swanson	<u>SITE</u>
<u>POLICY REVIEW</u> Bob Icenogle (chair) Brenda Sherman Kyle Fisher	<u>POLICY REVIEW</u>
<u>BOND</u> Brian Osborn Lisa Roseland Bob Icenogle	<u>BOND</u>
6. Appointment of Board of Education Negotiating Team:  

<u>2019</u>	<u>2020</u>
Kyle Fisher (chair) Brian Osborn Lisa Roseland	



7. Appointment of School Board Members to the Springfield Platteview Educational Foundation Board of Directors:

<u>2019 Members</u>	<u>2020 Members</u>
Brenda Sherman	
Kyle Fisher	
8. Appointment of M.A.B.E. Representative: 2019- Brenda Sherman; 2020-
10. Appointment of NASB Government Relations Network Representative: 2019- Kyle Fisher; 2020-
11. Designate Legal Publication: The Papillion Times (2019)  
Recommendation: Motion to designate The Papillion Times as legal publication for Springfield Platteview Community Schools in 2020.
12. Designate Financial Institution: Springfield State Bank (2019)  
Recommendation: Motion to designate the Springfield State Bank as the official depository for 2020.
13. Conflict of Interest Policies Review

Internal Board Policies - Board MembersConflict of Interest/Contracts

It shall be the policy of Springfield Platteview Community Schools that any contract whether oral or written, formal or informal, which is entered into by the school district and in which a member of the Board of Education is directly or indirectly interested, is voidable unless certain reporting, disclosure and abstention requirements are met. The school district is authorized to enter into a contract in which a member of the Board of Education is directly or indirectly interested so long as:

1. The Board member makes a declaration on the record regarding the nature of his/her interest prior to official consideration of the contract.
2. The affected Board member does not participate in consideration of the contract.
3. The Board member does not vote on the granting of the contract except that if the number of members of the Board declaring an interest in the contract would prevent the Board with all members present from securing a quorum in the issue, then all members may vote on the matter.
4. The Board member does not in any way participate in the inspection, operation, administration or performance under the contract on the part of the district.

It shall further be the policy of Springfield Platteview Community Schools that the above provisions apply not only to formal contracts but also to open accounts.

Legal Reference: §49-14,103.01

Date of Adoption: June 14, 2010

Internal Board PoliciesConflict of Interest - Employment of Immediate Family Member

1. A member of the Board of Education or an administrator or other employee with supervisory responsibilities may employ or recommend or supervise the employment of an immediate family member if:
  - (A) He or she does not abuse his or her official positions as such "abuse" is defined at paragraph 5 below:
  - (B) He or she makes a full disclosure on the record to the Board of Education and a written disclosure to the Superintendent and/or Secretary of the Board; and,
  - (C) The Board of Education approves the employment or supervisory position.
2. No immediate family member of a Board of Education or an administrator or other employee with supervisory responsibilities shall be employed by the School District:
  - (A) Without first having made a reasonable solicitation and consideration of applications for such employment.
  - (B) Who is not qualified for and able to perform the duties of the position.
  - (C) For any unreasonable high salary.
  - (D) Who is not required to perform the duties of the position.
3. Neither the Board of Education nor an administrator or other employee with supervisory responsibilities shall terminate the employment of another employee so as to make funds or a position available for the purpose of hiring an immediate family member.
4. This policy shall not apply to an immediate family member of a member of the Board of Education or an administrator or other employee with supervisory responsibilities who was previously employed in a position with the School District prior to the election or appointment of the Board member or employee. Prior to or as soon as reasonably possible after the official date a Board member takes office or an employee assumes his or her responsibilities, such Board member, administrator or other employee with supervisory responsibilities shall make a full disclosure of any immediate family member employed in a position subject to this policy.
5. Abuse of an official position includes, but is not limited to, employing an immediate family member:
  - (A) Who is not qualified for and able to perform the duties of the position;
  - (B) For any unreasonably high salary; or,
  - (C) Who is not required to perform the duties of the position.

6. A member of the Board of Education may not be employed to teach in the Springfield Platteview Community Schools Nor shall a member of the Board of Education cast a vote in favor of the election of any employee when the Board member is related by blood or marriage to such employee.

Legal Reference: Neb. Rev. Stat. '79-818; '79-544; '49-1499.04 and '49-1499.05.

Date of Adoption: June 14, 2010

Internal Board PoliciesConflict of Interest—Other Than Contracts or Employment

1. Members of the Board of Education of this School District shall abstain from voting on matters on which they may have a conflict of interest. Any Board member who would be required to take any action or make any decision in the discharge of his or her duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

- (a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and,
- (b) Deliver a copy of the statement to the Political Accountability and Disclosure Commission and to the Superintendent and Secretary of the Board of Education who shall enter the statement into the public records of the School District.

The Board member shall take such action as the Commission shall advise or prescribe to remove himself or herself from influence over the action or decision in the matter.

2. The provisions of paragraph 1 above shall not prevent a Board member from making or participating in the making of a School District-related decision to the extent that the individual's participation is legally required for the action or decision to be made. In such event, the Board member shall report the occurrence to the Commission.

3. Except as defined in Nebraska statute and this policy, conflict of interest of a Board member shall not prevent a Board member from serving on the Board or restrict the hiring or purchasing practices of this School District.

4. The Superintendent, or the Superintendent's designee, shall provide:

(A) Each Board member with copies of state statutes of Nebraska pertaining to conflicts of interest at the organizational meeting of the Board of Education held at the regular School Board meeting in January of each year. In addition, any newly appointed or elected Board member shall be provided such statutes.

(B) When possible, provide each Board member with a list of financial matters on the agenda to come before the Board of Education at the next regular meeting in sufficient detail to allow the Board member to identify potential conflicts of interest and report and receive advice from the Commission.

5. For purposes of this policy, immediate family member shall be defined as a child residing in the Board member's household, a Board member's spouse or an individual claimed by that Board member or the Board member's spouse as a dependent for federal income tax purposes.

Legal Reference: Neb. Rev. Stat. §49-1425;§49-14,101;  
§49-14,102; §49-14,103; §49-103.01;  
§49-14,103.02; §49-14,103.03;  
§49-14,103.04; §49-14,103.05; §49-14,103.06;  
§79-818; §79-544 and  
Neb. Rev. Stat. §49-1499.

Date of Adoption: June 14, 2010

Internal Board Policies - Board MembersReporting Procedures

It shall be the policy of Springfield Platteview Community Schools that any school Board member who has a direct or indirect interest in a formal contract entered into with Springfield Platteview Community Schools, or an open account, shall provide the Superintendent of schools with the following:

1. Names of the contracting parties.
2. Nature of the interest of the school Board member.
3. Date that the contract was approved by the school Board.
4. Amount of the contract.
5. Basic terms of the contract.

The above information shall be provided to the Superintendent of schools no later than ten (10) days after the contract has been signed by both parties. Such information shall be kept on a ledger, and shall be retained in the ledger for five (5) years from the date of the last day in office of the school Board member. The ledger kept by the Superintendent of schools shall be available for public inspection during the normal working hours.

It shall further be the policy of Springfield Platteview Community Schools that in the case of open accounts, the above information shall be filed within ten (10) days after the account is opened and thereafter the interested officer shall file a revision to the statement within ten (10) days of each payment on the account specifying the date and amount of the payment.

Legal Reference: §49-14,103.02

Date of Adoption: June 14, 2010

**Board of Education Work Session**  
Monday, November 25, 2019 5:30 PM

A meeting of the Board of Education of Springfield Platteview Community Schools in the County of Sarpy, in the State of Nebraska, was convened in open and public session at 5:30 p.m., Monday, November 25, 2019, at Springfield Elementary School. Present: Fisher, Icenogle, Osborn, Roseland, Sherman, and Swanson. Absent: None.

Notice of the meeting was given in advance thereof by posting in at least five public places as shown by the certificate of posting notice attached to these minutes. Notice of this meeting was simultaneously given to all members of the Board of Education, and a copy of their acknowledgment of receipt of notice and the agenda was communicated in the advance notice and in the notice to the Board of Education of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public. Statute 84-1407 to 84-1414 require that the Open Meetings Act be posted in the meeting room. President Swanson informed the board and the public that the Act is located on the west wall of the board room.

There was no public comment.

The Board discussed with the Architects and Construction Management Company on future design concepts for Westmont and Springfield Elementary Schools.

Action to adjourn meeting at 6:37 pm passed with a motion by Sherman and a second by Roseland. Vote: Yeas- Fisher, Icenogle, Osborn, Roseland, Sherman, Swanson. Nays- None.



## **Board of Education Regular Meeting**

Monday, December 9, 2019 7:00 PM

Site Committee Meeting The Site Committee started at 6:00 p.m. Roseland, Sherman, Fisher, Icenogle, and Osborn were present. (Discussion) The committee meeting adjourned at 6:44 p.m.

II. Finance Committee Meeting The Finance Committee started at 6:45 p.m. Roseland, Sherman, Fisher, Icenogle, and Osborn were present. Finance reports were reviewed by the committee. Discussion of the bills took place. The committee meeting adjourned at 6:54 p.m.

Call to Order and Roll Call A meeting of the Board of Education of Springfield Platteview Community Schools in the County of Sarpy, in the State of Nebraska, was convened in open and public session at 7:00 p.m., Monday, December 9, 2019, at the District Board Office, Central Services Building. Present: Fisher, Icenogle, Osborn, Roseland, Sherman. Absent: Swanson.

Notice of Open Meetings Act - Posted Notice of the meeting and committee meetings were given in advance thereof by posting in at least five public places as shown by the certificate of posting notice attached to these minutes. Notice of this meeting was simultaneously given to all members of the Board of Education, and a copy of their acknowledgment of receipt of notice and the agenda was communicated in the advance notice and in the notice to the Board of Education of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public. Statute 84-1407 to 84-1414 require that the Open Meetings Act be posted in the meeting room. Lisa Roseland informed the board and the public that the Act is located on the west wall of the board room.

Action to approve the Consent Agenda as presented passed with a motion by Sherman and a second by Fisher. Vote: Yeas- Fisher, Icenogle, Osborn, Roseland, Sherman. Nays- None.

There were no items from patrons on the agenda.

Action to approve a resolution to authorize the issuance of Tax Anticipation Refunding Bonds, Series 2020, in an amount Not To Exceed \$2,050,000.00 for the purpose of refunding the District's Tax Anticipation Notes, Series 2019, and cover all costs of issuance passed with a motion by Sherman and a second by Icenogle. Vote: Yeas- Fisher, Icenogle, Osborn, Roseland, Sherman. Nays- None.

ALP presented the board with possible building designs for Westmont and Springfield Elementary Schools.

Action to approve the superintendent, if approved by the Louisville Board of Education, the authority to enter into a spring sports coop with Louisville Public Schools for two years passed with a motion by Sherman and a second by Fisher. Vote: Fisher, Icenogle, Osborn, Roseland, Sherman. Nays- None.

Action to approve the junior high trip to Florida during spring break 2020 as presented passed with a motion by Sherman and a second by Fisher. Vote: Yeas- Fisher, Icenogle, Osborn, Roseland, Sherman. Nays- None.

Action to approve the superintendent contract for Brett Richards from July 1, 2020 to June 30, 2023 as presented passed with a motion by Sherman and a second by Roseland. Vote: Yeas- Fisher, Icenogle, Osborn, Roseland, Sherman. Nays- None.

Superintendent Richards discussed the possibility of purchasing a District Bus to provide transportation for students to and from activities. The bus would be funded by the district and the Educational Foundation, it would be the focus of the 2020 Foundation Auction donation campaign. The Board will revisit the item after the Foundation Board has met again.

Heidi Zierott updated the Board on the results of the 2019 Nebraska Frameworks Accreditation Visit. The district received very good commendations from the visit.

Building principals reported on student and staff successes in their respective buildings.

There were no items from patrons on items not on the agenda.

Board members reviewed their upcoming schedule of meetings, trainings, and conventions. Significant school calendar items were also discussed.

Action to adjourn the meeting at 8:22 p.m. passed with a motion by Sherman and a second by Fisher. Vote: Yeas- Fisher, Icenogle, Osborn, Roseland, Sherman. Nays- None.

SPRINGFIELD STATE BANK  
600 MAIN ST  
SPRINGFIELD, NE 68059-3220  
Tel: (402)253-2222

SPRINGFIELD PLATTEVIEW COMM  
STUDENT FEE ACCOUNT  
14801 S 108TH ST  
SPRINGFIELD NE 68059

Statement Date: 12/31/2019 Enclosures: ( 0)

Account No.: 4151129 Page: 1

### REGULAR CHECKING ACCOUNT SUMMARY

Category	Type : REG	Status : Active	Number	Amount
Balance Forward From 11/29/19				7.58
Debits				0.00
Ending Balance On 12/31/19				7.58
Average Balance (Collected)			7.58+	

Direct Inquiries About Electronic Entries To:  
Phone: (402) 253 - 2222

### AVERAGE AND MINIMUM BALANCES

Average Ledger Balance :	7.58	Minimum Ledger Balance :	7.58
Average Collected Balance :	7.58	Minimum Collected Balance :	7.58
Average Available Balance :	7.58	Minimum Available Balance :	7.58

### OVERDRAFT FEE SUMMARY

	Total For This Period	Total Year-To-Date
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$0.00

This Statement Cycle Reflects 32 Days

FOR "A CYBERSECURITY GUIDE FOR CONSUMERS" GO TO  
[HTTPS://WWW.FDIC.GOV/CONSUMERS/ASSISTANCE/PROTECTION/  
BROCHURES/CYBERCUSTOMER.PDF](https://www.fdic.gov/consumers/assistance/protection/brochures/cybercustomer.pdf)

### PRIVACY NOTICE

Federal law requires us to tell you how we collect, share,  
and protect your personal information. Our privacy policy  
has not changed and you may review our policy and practices  
with respect to your personal information at  
[springfieldstatebank.com/documents/annual-privacy-notice.pdf](http://springfieldstatebank.com/documents/annual-privacy-notice.pdf)  
or we will mail you a free copy upon request if you call us  
at 402-253-2222

End Statement

01/178/1E

## Administrative

1/3/2020

Date	Num	Transaction	Payment
12/9/2019	5836	Uno School Of Music cat: DUES FEES memo: 01-2-01100-810-000-22	250.00
12/10/2019	TXFR	TRANSFER FROM GENERAL MM	
12/10/2019	5837	POSTMASTER-SPRINGFIELD cat: POSTAGE memo: 01-2-02510-531-000-01	86.66
12/16/2019	5838	SGT. PEFFERS cat: HOLIDAY LUNCHEON memo: 01-2-02310-890-000-01	1,532.04
12/16/2019	5839	DOUGLAS COUNTY TREASURER cat: LC TAX OVERPAYMENT memo: 01-2-02510-890-000-01	289.63

<b>SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS</b>			
<b>Treasurer's Report</b>			
<b>For the month ended Dec. 31, 2019</b>			
<u>General Fund Now Account</u>			
Bank Balance: Beginning of Reporting Period		\$	379,121.72
Deposits:			
Springfield State Bank - Interest	\$	71.22	
Transfer from Admin Revolving	\$	0.00	
Transfers from Investment Account	\$	1,339,157.84	
Transfers from Bond Fund	\$	0.00	
Transfer from QCPUF	\$	0.00	
Transfers from Lunch Fund Investment	\$	45,573.43	
Transfers from Building Fund Investment	\$	174,206.45	\$ 1,559,008.94
			\$ 1,938,130.66
Disbursements			\$ 1,553,346.53
Bank Balance: End of Reporting Period			\$ 384,784.13
Outstanding Checks: End of Reporting Period			\$ 201,002.21
<b>NOW Account Balance: End of Reporting Period</b>			<b>\$ 183,781.92</b>
<u>General Fund Investment Account</u>			
Available Balance: Beginning of Reporting Period		\$	2,971,821.62
Deposits:			
Springfield State Bank - Interest	\$	331.04	
Sarpy County Treasurer - Local Taxes	\$	23,771.78	
Sarpy- MVT	\$	154,211.98	
State Aid	\$	23,130.00	
SPED SA Reimb- State	\$	107,307.00	
Federal- IDEA/ Title/ ReVision reimbursement	\$	0.00	
Rentals	\$	0.00	
County Fines/City Fees/ Liquor Licenses	\$	900.00	
Medicaid	\$	0.00	
Summer School/ Preschool payments	\$	150.00	
Refunds/ Reimbursements/ Payments	\$	139.00	
iPad Fees and Insurance	\$	25.00	
			\$ 309,965.80
			\$ 3,281,787.42
Disbursements			
Transfers to General Fund NOW	\$	1,339,157.84	
Administrative Revolving	\$	870.58	
Transfer to Depreciation	\$	0.00	
Transfer to back to Building Fund	\$	0.00	
Returned checks/ fees/ overpayment	\$	0.00	
Bank and other Service Charges	\$	193.30	\$ 1,340,221.72
<b>Investment Account Balance: End of Reporting Period</b>			<b>\$ 1,941,565.70</b>
<u>General Fund Administrative Revolving Account</u>			
Available Balance: Beginning of Reporting Period		\$	4,135.32

Deposits:			
Transfers From General Fund Investment Acc't	\$ 870.58		
Transfers From Building Fund	\$ 0.00		
		\$ 870.58	
		\$ 5,005.90	
Disbursements		\$ 2,468.33	
Bank Balance: End of Reporting Period		\$ 2,537.57	
Outstanding Checks: End of Reporting Period		\$ 0.00	
<b>Admin. Revolving Account Balance: End of Reporting Period</b>		<b>\$ 2,537.57</b>	
General Fund Administrative Revolving Account		\$ 2,537.57	
General Fund NOW Account		\$ 183,781.92	
General Fund Investment Account		\$ 1,941,565.70	
<b>TOTAL GENERAL FUND BALANCE</b>		<b>\$ 2,127,885.19</b>	
<u>Employee Benefit Fund</u>			
Available Balance: Beginning of Reporting Period		\$ 175,040.31	
Deposits:			
Springfield State Bank - Interest		\$ 23.02	
Transfers From General Fund Investment Acc't		\$ 0.00	
Bank Balance: End of Reporting Period		\$ 175,063.33	
Certificate of Deposit			
Available Balance: End of Reporting Period		\$ 175,063.33	
Disbursements		\$ 0.00	
<b>TOTAL EMPLOYEE BENEFIT BALANCE</b>		<b>\$ 175,063.33</b>	
<u>Special Building Fund Investment Account</u>			
Available Balance: Beginning of Reporting Period		\$ 446,454.62	
Deposits:			
Springfield State Bank - Interest	\$ 48.78		
Lease Purchase Proceeds	\$ 166,006.45		
Refunds/ Reimbursements/ Payments	\$ 0.00		
Sarpy County Treasurer - Local Taxes	\$ 4,218.23	\$ 170,273.46	
		\$ 616,728.08	
Disbursements	\$ 174,206.45	\$ 174,206.45	
Available Balance: End of Reporting Period		\$ 442,521.63	
<b>TOTAL SPECIAL BUILDING FUND BALANCE</b>		<b>\$ 442,521.63</b>	
<u>School Lunch Investment Account</u>			
Available Balance: Beginning of Reporting Period		\$ 142,358.75	
Deposits:			
Springfield State Bank - Interest	\$ 17.79		
Hot Lunches	\$ 29,519.08		
State/Federal Aid	\$ 14,139.42		

KidsCare Reimbursement	\$ 0.00	\$ 43,676.29
		\$ 186,035.04
Disbursements		
Transfers to NOW	\$ 45,573.43	
Transfer to Admin Revolving	\$ 0.00	
Returned checks debit/fees	\$ 20.00	
		\$ 45,593.43
Available Balance: End of Reporting Period		\$ 45,593.43
<b>TOTAL SCHOOL LUNCH FUND BALANCE</b>		<b>\$ 140,441.61</b>
<u>Bond Fund Investment Account</u>		
Available Balance: Beginning of Reporting Period		\$ 25,770.32
Deposits:		
Springfield State Bank - Interest	\$ 3.45	
Sarpy County Treasurer - Local Taxes	\$ 710.21	\$ 713.66
		\$ 26,483.98
Disbursements		\$ 0.00
Transfer to NOW		\$ 0.00
Available Balance: End of Reporting Period		\$ 26,483.98
<b>TOTAL BOND FUND BALANCE</b>		<b>\$ 26,483.98</b>
<u>Depreciation Fund Account</u>		
Available Balance: Beginning of Reporting Period		\$ 72,584.43
Deposits:		
Springfield State Bank - Interest	\$ 9.55	
Transfers from General Fund	\$ 0.00	\$ 9.55
		\$ 72,593.98
Disbursements		
Transfer to NOW	\$ 0.00	\$ 0.00
Available Balance: End of Reporting Period		\$ 72,593.98
<b>TOTAL DEPRECIATION FUND BALANCE</b>		<b>\$ 72,593.98</b>
<u>QCPUF Fund Account</u>		
Available Balance: Beginning of Reporting Period		\$ 2,669.01
Deposits:		
Springfield State Bank Interest	\$ 0.14	
Local Real Estate Taxes	\$ 652.14	\$ 3,321.29
Disbursements		
Transfer to NOW	\$ 0.00	\$ 0.00
Available Balance: End of Reporting Period		\$ 3,321.29

<b>TOTAL QCPUF FUND BALANCE</b>			<b>\$</b>	<b>3,321.29</b>
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# Current Cash Balance

Sorted by Site ID, Group ID; Filtered by Site.  
From 12/01/2019 to 12/31/2019.

Site ID Site Name  
Group ID Group Name

		Beginning Cash	Receipts	Disbursements	Adjustments	Cash Balance
PHS	Platteview High School					
A	Athletics	4,734.09	6,426.00	10,512.62	0.00	647.47
B	Activities	14,458.11	2,472.00	2,179.80	0.00	14,750.31
C	Classes	51,816.51	3,941.75	1,379.68	0.00	54,378.58
D	Clubs/Organizations	16,373.33	2,958.00	955.18	75.70	18,451.85
E	Education	5,240.00	0.00	107.31	0.00	5,132.69
F	Fundraising	22,568.20	4,658.97	4,108.26	0.00	23,118.91
M	Miscellaneous	12,318.96	11,675.01	4,793.96	1,003.00	20,203.01
N	Non-Active Accounts	0.00	0.00	0.00	0.00	0.00
PHS Totals:		127,509.20	32,131.73	24,036.81	1,078.70	136,682.82
Report Totals:		127,509.20	32,131.73	24,036.81	1,078.70	136,682.82

# Current Cash Balance

Sorted by Site ID, Group ID, Activity ID; Filtered by Site  
From 12/01/2019 to 12/31/2019.

Site ID Group ID	Site Name Group Name	Activity ID	Activity Name	Beginning Cash	Receipts	Disbursements	Adjustments	Cash Balance
PCJH	Platteview Central Jr High							
D	Clubs/Organizations							
	440		National Honor Society	721.32	117.00	47.82	0.00	790.50
	465		Student Council	789.63	0.00	344.00	0.00	445.63
		D	Totals:	1,510.95	117.00	391.82	0.00	1,236.13
M	Miscellaneous							
	727		Destination Imagination	1,197.55	0.00	145.36	0.00	1,052.19
	745		Library	254.67	10.00	0.00	0.00	264.67
	750		Principal	3,854.90	1,200.00	249.85	0.99	4,806.04
	755		Parent Advisory Council	3,244.36	225.00	210.00	0.00	3,259.36
	765		Science In Motion	833.95	0.00	0.00	0.00	833.95
		M	Totals:	9,385.43	1,435.00	605.21	0.99	10,216.21
	PCJH		Totals:	10,896.38	1,552.00	997.03	0.99	11,452.34
			Report Totals:	10,896.38	1,552.00	997.03	0.99	11,452.34

*David Johnson*  
1-8-2020

# Current Cash Balance

Sorted by Site ID, Group ID, Activity ID; Filtered by Site  
From 12/01/2019 to 12/31/2019

Site ID Group ID	Site Name Group Name	Activity ID	Activity Name	Beginning Cash	Receipts	Disbursements	Adjustments	Cash Balance
SE	Springfield Elementary							
D	Clubs/Organizations							
	465		Student Council	446.89	0.00	0.00	0.00	446.89
		D	Totals:	446.89	0.00	0.00	0.00	446.89
M	Miscellaneous							
	727		Destination Imagination	1,450.00	0.00	0.00	0.00	1,450.00
	745		Library	1,084.04	0.00	0.00	0.00	1,084.04
	750		Principal	2,042.73	0.00	0.00	0.77	2,043.50
	760		Pop	384.03	0.00	0.00	0.00	384.03
	775		Walk-A-Thon	3,060.10	0.00	0.00	0.00	3,060.10
		M	Totals:	8,020.90	0.00	0.00	0.77	8,021.67
	SE		Totals:	8,467.79	0.00	0.00	0.77	8,468.56
			Report Totals:	8,467.79	0.00	0.00	0.77	8,468.56

*Karla Jay Heneger*

# Current Cash Balance

Sorted by Site ID, Group ID, Activity ID; Filtered by Site.

From 12/01/2019 to 12/31/2019.

Site ID	Site Name						
Group ID	Group Name						
Activity ID	Activity Name	Beginning Cash	Receipts	Disbursements	Adjustments	Cash Balance	
WE	Westmont Elementary						
D	Clubs/Organizations						
465	Student Council	67.36	0.00	0.00	0.00	67.36	
	D Totals:	67.36	0.00	0.00	0.00	67.36	
M	Miscellaneous						
727	Destination Imagination	2,526.16	103.03	500.70	0.00	2,128.49	
745	Library	4,299.00	30.00	0.00	0.00	4,329.00	
750	Principal	3,433.89	1,525.00	21.06	0.00	4,937.83	
760	Pop	609.67	84.37	0.00	0.00	694.04	
	M Totals:	10,868.72	1,742.40	521.76	0.00	12,089.36	
	WE Totals:	10,936.08	1,742.40	521.76	0.00	12,156.72	
	Report Totals:	10,936.08	1,742.40	521.76	0.00	12,156.72	

Melissa Hasty

## Reconciliation Summary

## BANK STATEMENT -- CLEARED TRANSACTIONS:

Previous Balance:			1,913.23
Checks and Payments	1	Item	-1,865.00
Deposits and Other Credits	0	Items	0.00
Service Charge	0	Items	0.00
Interest Earned	0	Items	0.00
Ending Balance of Bank Statement:			48.23

## YOUR RECORDS -- UNCLEARED TRANSACTIONS:

Cleared Balance:			48.23
Checks and Payments	0	Items	0.00
Deposits and Other Credits	0	Items	0.00
Register Balance as of 11/30/2019:			48.23
Checks and Payments	0	Items	0.00
Deposits and Other Credits	0	Items	0.00
Register Ending Balance:			48.23

# Springfield Platteview Community Schools

## Check Payments By Fund Report - JANUARY 13, 2019

<b>GENERAL FUND</b>			
<b>Payee</b>	<b>Account Code</b>	<b>Reason</b>	<b>Amount</b>
Alexander, Ronald A	01-2-02410-333-000-22	REIMBR. MILEAGE	\$68.44
Alexander, Ronald A	01-2-02410-333-000-22	REIMBR. MILEAGE/ AD CONFERENCE	\$45.24
Alexander, Ronald A	01-2-02410-580-000-22	REIMBR. MILEAGE/ AD CONFERENCE	\$286.00
AMAZON	01-2-01100-610-000-01	SUPPLIES	\$123.60
AMAZON	01-2-01100-610-001-22	SUPPLIES	\$485.97
AMAZON	01-2-01200-610-000-12	SUPPLIES	\$114.20
AMAZON	01-2-01200-610-000-22	SUPPLIES	\$87.36
AMAZON	01-2-01200-650-001-22	SUPPLIES	\$78.69
AMAZON	01-2-01291-650-002-11	SUPPLIES	\$104.14
AMAZON	01-2-01291-650-004-12	SUPPLIES	\$104.15
AMAZON	01-2-01291-734-002-11	SUPPLIES	\$249.99
AMAZON	01-2-01291-734-004-12	SUPPLIES	\$249.99
AMAZON	01-2-02152-734-000-01	SUPPLIES	\$348.90
AMAZON	01-2-02210-640-000-01	SUPPLIES	\$481.92
AMAZON	01-2-02220-450-000-22	SUPPLIES	\$68.97
AMAZON	01-2-02220-610-000-22	SUPPLIES	\$81.56
AMAZON	01-2-02220-734-000-21	SUPPLIES	\$95.11
AMAZON	01-2-02410-610-000-22	SUPPLIES	\$105.38
American Express	01-2-01100-610-005-21	DEC 2019 CREDIT CARD	\$82.79
American Express	01-2-01100-643-000-01	DEC 2019 CREDIT CARD	\$16.04
American Express	01-2-02130-610-000-01	DEC 2019 CREDIT CARD	\$1,906.27
American Express	01-2-02151-610-000-11	DEC 2019 CREDIT CARD	\$581.58
American Express	01-2-02320-580-000-01	DEC 2019 CREDIT CARD	\$5.00
American Express	01-2-02410-580-000-22	DEC 2019 CREDIT CARD	\$598.26
American Express	01-2-02410-610-000-22	DEC 2019 CREDIT CARD	\$1,979.18
American Express	01-2-02410-890-000-12	DEC 2019 CREDIT CARD	-\$388.00
American Express	01-2-02510-531-000-01	DEC 2019 CREDIT CARD	\$942.25
American Express	01-2-02560-610-000-01	DEC 2019 CREDIT CARD	\$22.58
American Express	01-2-02560-810-000-01	DEC 2019 CREDIT CARD	\$70.00
American Express	01-2-02560-890-000-01	DEC 2019 CREDIT CARD	\$2.47
American Express	01-2-02650-626-000-01	DEC 2019 CREDIT CARD	\$478.03
ANNE BENNETT	01-2-01291-330-000-11	PYRAMID TRAINING	\$203.01
ANNE BENNETT	01-2-01291-330-000-12	PYRAMID TRAINING	\$204.01
Apple, Inc.	01-2-01100-610-001-22	SUPPLIES	\$208.00
Apple, Inc.	01-2-01100-643-000-22	VOLUME PURCHASE PROGRAM CREDIT FOR EDUCATION	\$27.98
Apple, Inc.	01-2-02210-643-000-01	VOLUME PURCHASE PROGRAM CREDIT FOR EDUCATION	\$800.00
Baugh, Nichole	01-2-02560-333-000-01	REIMBR. MILEAGE	\$80.85
Binary Net, LLC	01-2-01100-643-000-01	fs2	\$49.90

Black Hills Energy	01-2-02610-621-000-12	FUEL AT WM	\$703.77
Blick Art Materials	01-2-01100-610-001-22	SUPPLIES	\$488.65
Bromm Nielsen & Mines	01-2-02510-314-000-01	2020 LOBBYIST REGISTRATION	\$200.00
Bromm Nielsen & Mines	01-2-02510-314-000-01	LOBBYING 2019- 2ND INSTALLENT	\$14,250.00
Buskirk, Richard	01-2-02650-430-000-01	TOW FOR VAN	\$237.00
Canon Financial Services, Inc.	01-2-02510-443-000-01	COPIER LEASE	\$1,455.00
CAROL J SALBER	01-2-01200-320-000-01	SPED SERVICE	\$225.00
CENTURY LINK	01-2-02510-530-000-01	PHONE	\$354.87
Chad's Auto Repair	01-2-02650-430-000-01	FUEL PUMP 2008 VAN	\$1,135.84
CHILDREN SUCCEED THERAPY, LLC	01-2-02161-340-000-01	SPED SERVICE	\$544.50
CHILDREN SUCCEED THERAPY, LLC	01-2-02162-340-000-01	SPED SERVICE	\$396.00
CHILDREN SUCCEED THERAPY, LLC	01-2-02163-340-000-01	SPED SERVICE	\$99.00
CHILDREN SUCCEED THERAPY, LLC	01-2-02171-340-000-01	SPED SERVICE	\$478.50
CHILDREN SUCCEED THERAPY, LLC	01-2-02173-340-000-01	SPED SERVICE	\$247.50
City Of Springfield	01-2-02610-410-000-11	WATER & SEWER @ SP	\$93.45
City Of Springfield	01-2-02610-622-000-22	CITY PARK/BUFFALO PARK ELECTRICITY USAGE 2019	\$686.69
COX BUSINESS	01-2-02510-530-000-01	PHONE	\$614.74
Culligan Us Filter	01-2-01100-610-002-11	SUPPLIES	\$111.00
Culligan Us Filter	01-2-02410-340-000-22	SUPPLIES	\$13.00
Culligan Us Filter	01-2-02510-610-000-01	SUPPLIES	\$27.00
CYRGUS CO. LLC	01-2-01100-610-001-22	SUPPLIES	\$103.60
Decker, Inc.	01-2-02610-610-000-11	SUPPLIES	\$44.65
Donner, Karin J	01-2-01100-610-001-22	REIMBR. SUPPLIES	\$43.46
Dostal, Alexander J	01-2-01100-643-000-22	REIMBR. SUPPLIES	\$90.20
Educational Service #3	01-2-01100-810-000-11	HAL: WKSHP @ SP	\$200.00
Educational Service #3	01-2-01200-330-000-01	WORKSHP- LUCAS , ZIEROTT	\$75.00
Educational Service #3	01-2-02210-330-000-01	WORKSHP- LUCAS , ZIEROTT	\$75.00
Educational Service #3	01-2-02510-610-000-01	LASERFICHE BILLING	\$93.47
Educational Service Unit #3 (SPED)	01-2-01292-562-000-01	SPED SERVICE	\$5,338.72
Educational Service Unit #3 (SPED)	01-2-02141-330-000-01	WORKSHP- S.DILL	\$10.00
Educational Service Unit #3 (SPED)	01-2-02181-562-000-01	SPED SERVICE	\$2,180.96
Egan Supply Company	01-2-02620-610-000-01	SUPPLIES	\$608.16
ELMAN	01-2-02560-550-000-01	SAVE THE DATE	\$97.06
ERIN E VAN ROEKEL	01-2-02151-340-000-01	SPED SERVICE	\$1,957.50
FIBER PLATFORM, LLC	01-2-02510-530-000-01	MONTHLY SERVICE	\$2,091.85
Flinn Scientific	01-2-01100-610-001-22	SUPPLIES	\$139.85
GENERAL PARTS GROUP	01-2-02620-430-000-01	OVEN REPAIR @ PC	\$2,274.18
Glover, Ted A	01-2-01100-580-000-11	REIMBR. CONF. MEALS	\$24.33
Grainger	01-2-02620-610-000-01	CREDIT MEMO	-\$543.50
Grainger	01-2-02620-610-000-01	SUPPLIES	\$1,083.45
Great Plains Pest Services In	01-2-02620-420-000-01	PEST CONTROL	\$150.00
Greater Omaha Refrigeration	01-2-02620-430-000-01	REPAIR ICEMACHINE @ PC	\$1,011.74
GRP & ASSOCIATES, INC.	01-2-02130-610-000-01	SUPPLIES	\$62.95
Harris	01-2-02410-610-000-22	SUPPLIES	\$353.87
Harvat, Michele A	01-2-02151-333-000-12	REIMBR. MILEAGE	\$42.80

Hayes Mechanical, LLC	01-2-02620-430-000-01	BOILER REPAIR @ PHS	\$449.86
Hayes Mechanical, LLC	01-2-02620-430-000-01	PUMP SEAL REPAIR	\$654.79
HEGGERTY	01-2-01200-640-000-11	CURRICULUM ENGLISH	\$213.97
HEGGERTY	01-2-01200-640-004-12	CURRICULUM ENGLISH	\$213.98
HEGGERTY	01-2-02210-640-000-01	ENGLISH CURRICULUM	\$770.30
Hillyard/Sioux Falls	01-2-02620-610-000-01	SUPPLIES	\$330.62
HOBV	01-2-02120-810-001-22	REGISTRATION	\$225.00
Home Depot/GEFCF	01-2-01100-610-001-22	CREDIT MEMO	-\$23.84
Home Depot/GEFCF	01-2-01100-610-001-22	SUPPLIES	\$1,502.59
Home Depot/GEFCF	01-2-02620-610-000-01	SUPPLIES	\$27.00
HyVee Food & Drug Store	01-2-02210-610-000-01	SUPPLIES	\$13.47
HyVee Food & Drug Store	01-2-02210-890-000-01	SUPPLIES	\$104.81
HyVee Food & Drug Store	01-2-02310-890-000-01	SUPPLIES	\$236.65
HyVee Food & Drug Store	01-2-02410-610-000-22	SUPPLIES	\$58.41
iFixOmaha LLC	01-2-01100-432-000-01	IPAD REPAIRS	\$288.90
JODI KOHL	01-2-02320-340-000-01	PR SERVICE NOV 2019	\$1,032.00
JODI KOHL	01-2-02320-340-000-01	PR SERVICE- DEC 2019	\$1,032.00
Ketchen, Paul R	01-2-01100-333-000-11	REIMBR. MILEAGE- SP	\$122.26
Ketchen, Paul R	01-2-01100-333-000-12	REIMBR. MILEAGE-WM	\$335.24
Ketchen, Paul R	01-2-01100-580-001-22	REIMBR. CONFERENCE FEE/PARKING	\$22.50
Ketchen, Paul R	01-2-01100-810-000-22	REIMBR. CONFERENCE FEE/PARKING	\$120.00
King, Matthew T	01-2-01100-580-001-22	NMEA CONV./ ALLSTATE STUDENTS	\$227.67
King, Matthew T	01-2-01100-810-000-22	NMEA CONF REGISTRATION	\$170.00
KSB School Law, PC LLO	01-2-02320-317-000-01	LEGAL SERVICE	\$1,552.50
KUULEILANI ZALOPANY	01-2-02711-332-000-01	PARENT MILEAGE REIMB	\$224.15
KUULEILANI ZALOPANY	01-2-02711-332-000-01	REIMBR PARENT MILEAGE	\$61.33
Lucas, Jacqueline N	01-2-01200-333-000-01	REIMBR MILEAGE- DEC 2019	\$44.54
Mahoney, Jeremy R	01-2-01100-333-000-01	REIMBR MILEAGE	\$32.48
Mailfinance	01-2-02510-531-000-01	POSTAGE LEASE	\$233.89
Mark's Plumbing Parts	01-2-02620-610-000-01	SUPPLIES	\$153.00
MCI	01-2-02510-530-000-01	LONG DISTANCE	\$131.89
MECHANICAL SALES, INC.	01-2-02620-430-000-01	HEAT PUMP @ PC REPAIR	\$247.50
Metropolitan Utilities Dist	01-2-02610-621-000-01	LEVEL PAYMENT	\$376.00
Metropolitan Utilities Dist	01-2-02610-621-000-11	LEVEL PAYMENT	\$489.00
Metropolitan Utilities Dist	01-2-02610-621-000-21	FUEL @ PC	\$254.11
Metropolitan Utilities Dist	01-2-02610-621-000-22	LEVEL PAYMENT	\$3,603.00
Metropolitan Utilities Dist	01-2-02620-621-000-03	FUEL @ STORAGE BLDG	\$338.33
Midlands Printing & Business Forms, Inc.	01-2-02510-610-000-01	SUPPLIES	\$500.34
Namify	01-2-02310-890-000-01	SUPPLIES	\$25.60
NE Council of School Administrators	01-2-02320-330-000-01	WORKSHOP- B. RICHARDS	\$115.00
Omaha Public Power District	01-2-02610-622-000-02	LEVEL PAYMENT	\$695.85
Omaha Public Power District	01-2-02610-622-000-11	LEVEL PAYMENT	\$3,257.02
Omaha Public Power District	01-2-02610-622-000-12	LEVEL PAYMENT	\$3,891.33
Omaha Public Power District	01-2-02610-622-000-22	LEVEL PAYMENT	\$14,295.80
One Source	01-2-02510-340-000-01	BACK GROUND CKS	\$160.00



One Source	01-2-02510-340-000-01	BACKGROUND CKS	\$45.00
OPAA! FOOD MGT. OF NE, LLC.	01-2-01291-610-002-11	PK SUPPLIES	\$401.38
OPAA! FOOD MGT. OF NE, LLC.	01-2-01291-610-004-12	PK SUPPLIES	\$401.38
Papillion Sanitation	01-2-02620-420-000-01	SANITATION PICK UP	\$642.67
Perry,Guthery,Haase & Gessford,P.C.,L.L	01-2-02320-317-000-01	LEGAL SERVICE	\$1,170.00
Platteview High School	01-2-08000-913-000-01	TRANSFER TO ACTIVITY FUND	\$3,000.00
Prime Communications, Inc.	01-2-01100-734-000-01	WIFI NETWORK FOR GAMING	\$425.00
Quill Corp	01-2-02620-610-000-01	SUPPLIES	\$57.58
Rainbow Glass And Supply	01-2-02620-430-000-01	PHS- BOILER ROOM DOOR	\$6,445.00
Rainbow Glass And Supply	01-2-02620-430-000-01	PHS- REBUILD PANIC FIRE DOOR	\$160.00
Rainbow Glass And Supply	01-2-02620-430-000-01	SP- PLAYGROUND	\$227.05
Rosser Lawn Care, Inc.	01-2-02620-420-000-01	PHS- SNOW REMOVAL	\$2,157.50
Rosser Lawn Care, Inc.	01-2-02620-420-000-01	SP- SNOW REMOVAL	\$578.75
Rosser Lawn Care, Inc.	01-2-02620-420-000-01	WM- SNOW REMOVAL	\$1,441.25
S I D #23	01-2-02610-410-000-12	WATER & SEWER @ WM	\$504.56
Sarpy County Treasurer's Offi	01-2-02660-340-000-01	SRO- 2ND & 3RD QTR 2020	\$24,782.36
SATELLITE SHELTERS- KANSAS CITY	01-2-02620-442-000-01	PORTABLE RENTAL @ SP	\$1,168.00
School Nurse Supply, Inc.	01-2-02130-610-000-01	SUPPLIES	\$35.02
SHRED-IT, USA	01-2-01100-890-000-21	SHREDDING	\$33.93
SHRED-IT, USA	01-2-01100-890-000-22	SHREDDING	\$67.87
Sparq Data Solutions, Inc.	01-2-02310-643-000-01	SUBSCRIPTION- SPARQ & NEGOTIATIONS	\$4,600.00
SPORTS FACILITY MAINTENANCE, LLC	01-2-02620-430-000-01	2019 INSPECTION	\$6,900.00
SPRINGFIELD ACE	01-2-02620-610-000-01	SUPPLIES	\$26.97
Staskiewicz, Frank	01-2-01100-333-000-01	REIMBR MILEAGE/CONF. ROOM	\$307.63
Staskiewicz, Frank	01-2-01100-580-000-01	REIMBR MILEAGE/CONF. ROOM	\$505.47
Student Transportation of NE, Inc.	01-2-02790-510-000-01	ACTIVITY TRIPS- NOV 2019	\$6,102.21
Student Transportation of NE, Inc.	01-2-02790-510-000-01	REGULAR TRANSPORTATION- NOV 2019	\$41,932.24
Student Transportation of NE, Inc.	01-2-02790-626-000-01	FUEL ESCALATOR	\$1,798.40
Student Transportation of NE, Inc.	01-2-02792-510-000-01	SPED TRANSPORTATION	\$19,807.50
Student Transportation of NE, Inc.	01-2-02793-510-000-01	SPED TRANSPORTATION	\$2,318.36
Suburban Newspapers, Inc	01-2-02510-540-000-01	LEGALS	\$29.24
Thomas, Tina M	01-2-01100-610-005-21	REIMBR SUPPLIES	\$125.50
TURNITIN, LLC	01-2-02410-610-000-22	FEEDBACK STUDIO SCHOOL	\$60.00
Union Bank & Trust Company	01-2-02510-890-000-01	ADMIN. ANNUAL FEE	\$524.00
Verizon Wireless	01-2-02510-530-000-01	CELL PHONE	\$281.46
Walmart Community/GECRB	01-2-01100-610-001-22	SUPPLIES	\$466.99
Westside Community Schools	01-2-01200-562-000-20	SPED SERVICE	\$3,750.00
WHC NE LLC	01-2-02712-510-000-01	SPED TRANSPORTATION	\$3,464.00
Wilson, Leslie A	01-2-02152-333-000-01	REIMBR. MILEAGE NOV 2019	\$110.66
Wilson, Leslie A	01-2-02153-333-000-01	REIMBR. MILEAGE NOV 2019	\$166.29
Windstream	01-2-02510-530-000-01	PHONE	\$431.18
WON-DOOR CORPORATION	01-2-02620-810-000-01	MAINT AGREEMENT	\$339.00
Zeleny, Kimberly A	01-2-01100-643-000-22	REIMBR. SUBSCRIPTION QUIA	\$99.00
			<b>\$227,721.86</b>

BUILDING FUND			
Payee	Account Code	Reason	Amount
Daktronics, INC.	08-2-04700-731-000-01	TIMERS/BACKBOARD LIGHTING	\$12,658.00
			<b>\$12,658.00</b>
			<b>\$240,379.86</b>



Prepared For  
BRETT RICHARDS  
SO SARPY SCHOOL 46

Account Number  
XXXX-XXXXX7-21006

Closing Date  
12/22/19

Page 3 of 7

# Activity Continued

Card Number XXXX-XXXXX7-24026	Reference Code	Amount \$
11/23/19 USPS.COM POSTAL STOR 800-782-6724 MO REF# 11635534429 8002758777 11/22/19 ROC NUMBER 11635534429	11635534429 PHS - pre-stamp envelopes 01-2-02510-531-01	942.25
11/24/19 B & D Pitstop SPRINGFIELD NE REF# 85544029328 402-253-8004 11/22/19	85544029328 fuel	56.69
11/26/19 B & D Pitstop SPRINGFIELD NE REF# 85544029330 402-253-8004 11/25/19	85544029330 fuel	40.14
11/27/19 FACEBK*PNLNZPE4P2 MENLO PARK US REF# P2559511024 ADVERTISING SERV 11/26/19	N. Baugh 01-2-02560-890-01 *	2.47
11/28/19 B & D Pitstop SPRINGFIELD NE REF# 85544029332 402-253-8004 11/27/19	85544029332 fuel	63.00
11/29/19 ADOBE ACROPRO SUBS A SAN JOSE CA REF# 827439859 8008336687 11/28/19	82743985900 Frank 01-2-01100-643-01	16.04
12/03/19 B & D Pitstop SPRINGFIELD NE REF# 85544029337 402-253-8004 12/02/19	85544029337 fuel	12.65
12/04/19 B & D Pitstop SPRINGFIELD NE REF# 85544029338 402-253-8004 12/03/19	85544029338 fuel	52.27
12/05/19 B & D Pitstop SPRINGFIELD NE REF# 85544029339 402-253-8004 12/04/19	85544029339 fuel	13.67
12/06/19 B & D Pitstop SPRINGFIELD NE REF# 85544029340 402-253-8004 12/05/19	85544029340 fuel	15.08
12/06/19 BUS MGMT DAILY COMMU 8005432055 VA REF# 10028621087 8005432055 12/05/19 PUBLISHING AND PRIN ROC NUMBER 100286210871	10028621087 H. Hasty 01-2-02410-890-12	388.00 Credit
12/08/19 B & D Pitstop SPRINGFIELD NE REF# 85544029342 402-253-8004 12/07/19	85544029342 fuel	40.82
12/10/19 VISTAPR*VISTAPRINT.C 866-8936743 MA REF# 4M4UAV5SQE6 PRINTING 12/10/19	866-8936743 PC - b. Johnson 01-2-01100-610-21	82.79
12/11/19 NASCO FORT ATKINSON FORT ATKINSON WI REF# 73011009345 MHOLLMAN@NASCO. 12/10/19	73011009345 Foundation H. Woodward	474.00
12/11/19 SHOPKEEP.COM INC. NEW YORK NY REF# 85426239345 800-820-9814 12/11/19	85426239345 PHS - J. Harriman 01-2-02410-610-22	1,979.18
12/11/19 ACADEMIC THERAPY WEB NOVATO CA 00534507 94481 94949 12/11/19 BUSINESS SERVICES ROC NUMBER 00534507	00534507000 SPED H. Whitcomb 01-2-02151-610-11	320.00
12/11/19 PEARSON EDUCATION PRSONCS.COM NJ REF# 49615815338 WEB SUBSCRIP 12/06/19	49615815338 SPED H. Whitcomb 01-2-02151-610-11	261.58
12/12/19 TARGET.COM * 3991 800-591-3869 MN REF# 10624644793 800-591-3869 12/12/19 APPAREL, HOUSEWARES ROC NUMBER 106246447932	10624644793 N. Baugh 01-2-02560-610-01	22.58
12/12/19 CORNHUSKERS SQUARE 0 LINCOLN NE REF# 49980031 402-441-7275 12/11/19 AUTOMOBILE PARKING ROC NUMBER 49980031	49980031000 Brett 01-2-02320-580-01	5.00
12/15/19 B & D Pitstop SPRINGFIELD NE REF# 85544029349 402-253-8004 12/13/19	85544029349 fuel	49.55
12/15/19 B & D Pitstop SPRINGFIELD NE REF# 85544029349 402-253-8004 12/14/19	85544029349 fuel	21.81
12/15/19 B & D Pitstop SPRINGFIELD NE REF# 85544029349 402-253-8004 12/14/19	85544029349 fuel	54.50
12/18/19 AC MANAGED A05 OXON HILL MD FOL# 000017120007 LODGING 12/17/19 ARRIVAL DATE DEPARTURE DATE 12/14/19 12/17/19 00 ROC NUMBER 000017120007	17120007000 R. Alexander 01-2-02410-580-22	598.26
12/19/19 B & D Pitstop SPRINGFIELD NE REF# 85544029353 402-253-8004 12/18/19	85544029353 fuel	57.85

fuel = \$478.03 = 01-2-02650-626-01

Continued on reverse

Prepared For  
**BRETT RICHARDS**  
**SO SARPY SCHOOL 46**

Account Number  
**XXXX-XXXXX7-21006**

Activity Continued				Reference Code	Amount
12/19/19	PAYPAL *SCEDC REF# 10029594973 4029787948 OTHER ROC NUMBER 100295949730	NE 12/18/19	10029594973	N. Baugh 01-2-02560-810-01	70.00
12/19/19	WORLDPOINT ECC INCOR WHEELING 730110093 1 68059 ROC NUMBER 7301100935390001	IL 12/18/19 CPR-Trainer	73011009353	H. Hertz 01-2-02130-610-01	1,906.27
Total for BRETT A. RICHARDS				New Charges/Other Debits Payments/Other Credits	7,158.45 -388.00

261



The Better Bank  
**FIVE POINTS BANK**

MEMBER FDIC

P.O. BOX 1507, GRAND ISLAND, NE 68802-1507

Address Service Requested



ACCOUNT:  
DOCUMENTS:

XXXXXX7773  
0

PAGE: 1  
12/31/2019



5352 1 AB 0.412 20



SARPY COUNTY SCHOOL DIST 0046  
14801 S 108TH ST  
SPRINGFIELD, NE 68059-4925

Business Checking ACCOUNT XXXXXX7773

AVG AVAILABLE BALANCE	269,121.76	LAST STATEMENT 11/29/19	310,623.38
AVERAGE BALANCE	269,121.76	CREDITS	.00
		1 DEBITS	166,006.45
		THIS STATEMENT 12/31/19	144,616.93

DESCRIPTION	OTHER DEBITS	DATE	AMOUNT
Wire Sent To SPRINGFIELD STATE BANK SPRINGFIELD		12/24	166,006.45

DATE.....BALANCE	DATE.....BALANCE	DATE.....BALANCE
12/24 144,616.93		

- END OF STATEMENT -

1-5PTS-DDAs-03 200101  
001-001-005352 000058281

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

## **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 \_\_\_\_\_ day of January in the year 2020.  
(In words, indicate day, month and year.)

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

Sarpy County School District 77-0046, a/k/a Springfield Platteview Community Schools  
A political subdivision of the State of Nebraska  
14801 S. 108th Street  
Springfield, NE 68059  
402-592-1300

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

Boyd Jones Construction Company  
A Nebraska corporation  
950 S. 10th Street, Suite 100  
Omaha, NE 68108  
402-553-1804

for the following Project:  
(Name and address or location)  
Springfield Platteview Community Schools

Project A – Construction of a new, three section elementary school building and related site utilities and infrastructure work and required furnishing, fixtures and equipment, generally consisting of approximately 70,000 square feet to accommodate 500 students, to be located on the northeast side of the intersection of 9th and Main streets in Springfield, Nebraska ("Project A");

Project B – Construction of additions and renovations to the existing Westmont Elementary School building located at 13210 Glenn Street, Omaha, Nebraska, with final scope of such additions and renovations to be determined at a later date ("Project B").

Collectively Project A and Project B shall be the "Project" or "Projects".

The Architect:  
(Name, legal status and address)

Alley Poyner Macchietto Architecture, Incorporated  
A Nebraska corporation  
1516 Cuming Street  
Omaha, NE 68102  
402-341-1544

The Owner's Designated Representative:  
(Name, address and other information)

### **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<sup>™</sup>–2007, 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.

Init.



Brett Richards, Superintendent of Schools  
Springfield Platteview Community Schools  
14801 S. 108th Street  
Springfield, NE 68059  
402-592-1300  
brichards@springfieldplatteview.org

The Construction Manager's Designated Representative:  
(Name, address and other information)

Tim Meyer  
Senior Vice President of Operations / Project Executive  
Boyd Jones Construction Company  
950 S. 10th Street, Suite 100  
402-550-1795  
tmeyer@boydjones.biz

The Architect's Designated Representative:  
(Name, address and other information)

Jay M. Palu, Partner  
Alley Poyner Macchietto Architecture, Incorporated  
1516 Cuming Street  
Omaha, NE 68102  
402-341-1544  
JPalu@alleypoyner.com

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 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 the 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. 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.

#### § 1.2 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.

**1.2.1 Term of Agreement:** The term of this Agreement between the Owner and the CM@R shall be for a period commencing with the issuance of the Notice to Proceed with the Project, and shall continue through the occurrence of one of the following events, whichever occurs first in time:

- .1 The completion of all services provided by the Construction Manager for the Projects under the terms of this Agreement, with the term of this Agreement to extend twelve (12) months after the issuance by the Architect of the last in time Certificate of Substantial Completion for the Projects.



- .2 The termination of this Agreement according to its terms; INCLUDING termination pursuant to Section 4.1.5 and Article 10 in the event the legal voters of the Owner do not approve the bond issue to finance the project.

**§ 1.2.2** This Agreement shall not create a continuing contract for construction management services for future building projects or bond elections beyond the terms of this Agreement.

### **§ 1.3 General Conditions**

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended and attached hereto, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007 as amended and attached hereto, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 as amended and attached hereto shall mean the Construction Manager. In the event that there are conflicting provisions between this Agreement and the General Conditions, the provisions of this Agreement shall control.

### **§ 1.4 Definitions**

#### **§ 1.4.1 The Project**

"The Project" or "Projects" shall mean the Springfield Platteview Community Schools new construction and additions and renovations projects, located in Springfield and Omaha, Nebraska, more particularly described on page 1 of this Agreement. Each Project shall have a separate Project Budget, plans and specifications, schedule, and Guaranteed Maximum Price (GMP).

#### **§ 1.4.2 Project and Construction Budgets**

The Owner's Construction Budgets for the Work on the Projects performed under this Agreement, plus the Construction Manager's compensation under Articles 4 and 5 of the Agreement and all Expenses to be Reimbursed, as defined in Article 6 of this Agreement, is as follows: The Construction Budget for Project A is approximately FIFTEEN MILLION DOLLARS (\$15,000,000); the Construction Budget for Project B is approximately THREE MILLION DOLLARS (\$3,000,000) (hereinafter "Project Budget"). The Owner's Project Budget, representing total budget for the entire Project including the Cost of the Work, and Construction Manager's compensation and reimbursable expenses is EIGHTEEN MILLION DOLLARS (\$18,000,000).

#### **§ 1.4.3 The Work**

"The Work" shall mean the Subcontracts and Self-Performed Work by the Construction Manager, if any, for the construction of the Project. The Construction Manager is responsible for the construction, administration and/or supervision of the Work under the Construction Documents.

#### **§ 1.4.4 Cost of the Work**

"Cost of the Work" shall mean the total cost of all Subcontracts, including Construction Manager's Self-Performed Work, for the construction of the Projects and site improvements described in the Contract Documents, all general conditions costs, aid-to-construction costs, and other Expenses to be Reimbursed, as defined in Article 6 to this Agreement. "Cost of the Work" shall not include the Construction Manager's Compensation under Articles 4 and 5 of this Agreement, unused Construction Contingency, unused Owner's Contingency, the cost of any insurance and surety contracts purchased or controlled by the Owner, or any other contracts or agreements that are not part of or described by the Construction Documents, or Architect/Engineering or other professional fees and expenses.

#### **§ 1.4.5 Costs to be Reimbursed**

"Costs to be Reimbursed" shall mean those expenses incurred by the Construction Manager that are to be reimbursed pursuant to the provisions of Article 6.

#### **§ 1.4.6 Construction Contingency**

"Construction Contingency" as referred to and identified in the Construction Budget, cost estimates for the Project, including any form of guaranteed maximum price, shall mean a dollar amount not designated for any division of the Work which is available to be applied to the Construction Budget for a specified division or divisions of the Work; provided that all funds identified as contingency funds are available for the project on an as needed basis and shall at all times be the sole property of the Owner. The Guaranteed Maximum Price will contain a separately-identified Construction Contingency amount. The Construction Contingency is not allocated to any particular item of the Cost

of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such causes or details are limited to refinement of details of design within the scope of standards, quality and quantities which were reasonably inferable from the Construction Documents at the time of the Owner's approval of the GMP. The Construction Manager, with Owner's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Depletion of the Construction Contingency shall not justify an increase to the Guaranteed Maximum Price. All savings in the Construction Contingency will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

#### **§ 1.4.7 Guaranteed Maximum Price**

"Guaranteed Maximum Price" or "GMP" shall mean the total of the sum of the Cost of the Work for the Project plus the Construction Manager's Compensation under Articles 4 and 5 hereof, the Construction Contingency, if any, which amount is guaranteed by the Construction Manager not to exceed the amount provided in provided in the approved Guaranteed Maximum Price Amendment, Exhibit B, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. **There shall be separate GMPs for each Project.** IF THE GUARANTEED MAXIMUM PRICE IS EXCEEDED FOR THE PROJECT, AS THE CASE MAY BE, THE CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR PAYMENT FROM ITS OWN RESOURCES WITH NO CONTRIBUTION FROM THE OWNER OF THE DIFFERENCE BETWEEN THE FINAL PRICE AS DEFINED AT PARAGRAPH 1.4.8 BELOW AND THE GUARANTEED MAXIMUM PRICE AS ADJUSTED BY CHANGE ORDERS, IF ANY.

#### **§ 1.4.8 Final Price**

"Final Price" shall mean the sum of the final Cost of the Work, Expenses to be Reimbursed, and the Construction Manager's Compensation. The Final Price shall be determined by the Owner based upon disbursements made by the Owner for the Project to construct the Work under the Contract Documents. The Owner shall notify the Construction Manager of the Final Price not less than thirty (30) days following the issuance of the last in time Certificate of Substantial Completion by the Architect for the Work. The Construction Manager shall have the right to inspect the records of the Owner and conduct an audit to confirm the Owner's calculation of the Final Price; provided, that the Construction Manager must request such audit within thirty (30) days of the receipt from the Owner of the Final Price calculation or the right to such audit shall be waived and the Final Price calculated by the Owner shall be final and binding on all parties.

#### **§ 1.4.9 Project Team**

"Project Team" shall mean the Owner's Designated Representative, or designee(s), Board Facilities Committee and other parties assigned by the Owner, the Construction Manager's Designated Representative, or designee(s), the Architect's Designated Representative, or designee(s), and the Fiscal Agent.

#### **§ 1.5 Financing**

Financing for the Project shall be through the issuance of bonds to be approved by the legal voters of the Owner at the special election anticipated to be held in May 2020 ("Bond Election").

### **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. 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. Unless the Construction Manager specifically provides design services, any recommendations and/or advice provided by the Construction Manager concerning potential value engineering options or design alternatives shall be in the capacity of a Construction Manager and not as a licensed design professional.

## **§ 2.1 Preconstruction Phase**

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

### **§ 2.1.2 Consultation**

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. The Construction Manager shall consult with and advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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. Unless the Construction Manager specifically provides design services, any recommendations and/or advice provided by the Construction Manager concerning potential value engineering options or design alternatives shall be in the capacity of a Construction Manager and not as a licensed design professional.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and monthly update a Project schedule, not less than monthly, for the Owner and 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 could 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 well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.4 Phased Construction**

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

### **§ 2.1.5 Preliminary Cost Estimates**

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

**§ 2.1.5.2** 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, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Construction Budget for the Project and make recommendations for corrective action.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall use due diligence to develop bidders' interest in the Project, which may include Construction Manager's Self-Performed Work with an emphasis on developing and encouraging local contractor interest.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's and Owner's review and the Owner's acceptance, a procurement schedule for items that must be ordered or procured well in advance of construction. The Construction Manager shall expedite and coordinate the ordering, procurement and delivery of materials that must be ordered well 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. Prior to the establishment of the Guaranteed Maximum Price (GMP) the Construction Manager may, with the Owner's written approval, procure Subcontracts for certain scopes of the work that if procured early are deemed by both Construction Manager and Owner as beneficial to the Project. Subcontracts must be procured in accordance with the Contract Documents. Any subcontracts that may be procured before Construction Phase Services commences shall be contingent on that commencement and establish limits to the cost exposure to the Project. Such limits shall be proposed by Construction Manager and approved by Owner in writing prior to issuance of any early procurement Subcontracts by Construction Manager.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall inquire on any perceived variances they are aware of. The Construction Manager shall ensure that all Self-Performed Work and Work performed by its Subcontractors is performed in accordance with the Contract Documents. 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.

#### **§ 2.1.9 Notices and 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 for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

*(Paragraph deleted)*

**§ 2.2.1** When the Construction Documents for the Project are approximately seventy percent (70%) completed, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance or comments for modification. There shall be separate Guaranteed Maximum Price proposals for each Project. The seventy percent (70%) completed Construction Documents for each Project are anticipated to be completed as follows: For Project A by Fall 2020 and for Project B by Fall 2020. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. The Construction Manager's Guaranteed Maximum Price proposal shall be broken down based upon the 16 Division spreadsheet form shown on Appendix "A".

**§ 2.2.1.1** The Architect shall deliver to the Construction Manager the Drawings and Specifications per the Project Schedule established by the Architect, Owner and Construction Manager. These documents will be approximately 70% complete Construction Documents (the "Basis Documents"). At the same time, the Architect will also deliver to the Construction Manager the Architect's detailed listing of any material incomplete design elements and the Architect's statement of intended scope with respect to such incomplete elements and divisions of the work (the "Design Intent Statement").

**§ 2.2.1.2** The Construction Manager's Guaranteed Maximum Price proposal shall be based upon the standard construction industry sixteen (16) divisions of the Work, or other current CSI designations, setting forth the estimated cost organized by materials and systems, trade categories, allowances, contingency, and other items, along with qualifications and assumptions based upon the Basis Documents and the Design Intent Statement and all information required under paragraph 2.2.3 below.

**§ 2.2.1.3** The Construction Manager, Owner, Project Architect, and selected consultants (Project Team) shall meet to identify the extent that Drawings and Specifications are anticipated to require further development by the Architect pursuant to subparagraph 2.2.2, contingencies pursuant to subparagraph 2.2.4, and reconcile any questions, discrepancies or disagreements relating to the qualifications and assumptions, the Basis Documents or the Design



Intent Statement pursuant to subparagraph 2.2.5. The reconciliation shall be documented by an addendum to the GMP qualifications and assumptions that shall be approved in writing by the Project Team.

**§ 2.2.1.4** The final negotiated GMP shall not exceed the Construction Budget established for construction. If the GMP exceeds the Construction Budget, the Owner reserves the right to terminate the agreement with the Construction Manager.

**§ 2.2.1.5 New Federal Tariffs.** The GMP may contain a "Tariff Material Cost Escalation Allowance" amount for the Project. Said allowance only may be used by the Construction Manager for post-GMP cost increases in materials and/or equipment for the Project caused solely by the imposition of new tariffs imposed by the United States or other countries after approval of the GMP. The Construction Manager shall only access and use the allowance to pay for the increased cost amounts for materials and/or equipment for the Project impacted by new tariffs; PROVIDED that the Construction Manager shall submit adequate evidence showing the materials and/or equipment impacted by new tariffs and shall verify that any costs increases were caused by tariffs. For the avoidance of doubt, this allowance shall not apply to the base costs of materials and/or equipment to be used on the Project, only for the cost difference between the actual costs with new tariffs and the base costs without new tariffs.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** 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 upon which the GMP is based;
- .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 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a detailed statement of the estimated Cost of the Work organized by construction industry divisions of work or current CSI designations, with any estimates of allowances, general conditions/aid-to-construction, Construction Contingency, and the Construction Manager's Fee;
- .4 The anticipated dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner and Construction Manager must mutually accept the Guaranteed Maximum Price or return the Construction Manager's proposal for modification or further refinement. The date must not be less than four (4) calendar weeks.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its Construction Contingency

**§ 2.2.4.2** The Construction Manager shall provide the Owner and Architect with a report on the status of the Construction Contingency on a monthly basis throughout the duration of the Project after the Guaranteed Maximum Price has been established. In each such monthly report on the status of the Construction Contingency, the Construction Manager shall identify (i) any amounts added to the Construction Contingency which are a result of positive variances or savings in the components of the Cost of the Work, (ii) any amount allocable up to the date of the report which are a result of negative variances in components of the Cost of the Work, and (iii) any amounts reserved from the Construction Contingency for anticipated negative variances in components of the Cost of the Work which have been identified but not fully evaluated. After being adjusted for items (i) through (iii) above, the remaining amount of the Construction Contingency shall be designated as the unallocated portion of the Construction Contingency. All charges to the Construction Contingency by Construction Manager shall be subject to providing the background information required in the Change Order process.

§ 2.2.4.3 The Construction Manager may, at its discretion, make portions of the Construction Contingency available for the Owner's use at their discretion. This is to allow the Owner's use of the funds when they are in excess of the expected potential risk at the stage of the Project.

§ 2.2.4.4 If, at the time Owner makes the final payment to the Construction Manager, there is a balance in the Construction Contingency, it shall inure to the benefit of the Owner.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and 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.

§ 2.2.6 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, identified as Exhibit A, 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.

2.2.6.1 In the event that the Owner and Construction Manager are not able to reach agreement upon a Guaranteed Maximum Price by the date specified in the Guaranteed Maximum Price proposal, Owner may terminate this Agreement in accordance with the provisions herein or, at Owner's sole discretion to do so, work with the Construction Manager to make value engineering and/or schedule changes in order to achieve a mutually agreed upon Guaranteed Maximum Price.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 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.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.1.3 On-Site Staffing

The Construction Manager shall maintain exclusively for the Project a competent, duly licensed and certified full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the Construction Manager's interview presentation and shall not be removed or replaced without the Owner's consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the Construction Manager shall promptly replace such personnel without consideration of any additional compensation for the replacement. Such on-site staffing shall include the following personnel who shall perform the following duties:

#### § 2.3.1.3.1 Project Manager

Construction Manager's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion and Final Completion have been completed or corrected in accordance with the Construction Documents.

#### **§ 2.3.1.3.2 On-Site Superintendent(s)**

The Construction Manager shall have a site superintendent on the site of the Work at all times the Work is being performed. The Construction Manager's site superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the site superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The Construction Manager's site superintendent's services shall include: (1) review of all stages of construction to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents; (2) responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the Subcontractor are in compliance with the Contract Documents and all local, state and federal regulations; (3) continuous on-site inspections to check quality or quantity of the Work; and, (4) keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

### **§ 2.3.2 Administration**

#### **§ 2.3.2.1 Actual Performance of the Work**

All of the Work on the Project, except such work identified and approved by the Owner's as an Aid-to-Construction Cost to be Reimbursed under Article 6 or work performed by the Construction Manager as Self-Performed Work, shall be performed under contracts between the Construction Manager and separate subcontractors ("Subcontracts"). Such Subcontracts shall be covered by the Construction Manager's payment and performance bonds. Upon reaching an agreement outlined in section 2.1.7 or the Drawings and Specifications are at the appropriate level for any given bid or proposal package as determined by the Construction Manager and approved by the Owner the Construction Manager shall advertise for competitive bids or proposals for each Subcontract and award such Subcontracts as set forth below. As part of the process of obtaining competitive bids for the Work, the Construction Manager shall perform the following responsibilities.

#### **§ 2.3.2.2 Construction Manager Development of Bid Packages**

The Construction Manager, in consultation with the Owner and Architect and with the approval of the Owner, shall develop bid packages and solicit Subcontractor and Supplier interest in the Project with emphasis on the development of bid packages that will encourage participation by local contractors, which may include Construction Manager's Self-Performed Work.

#### **§ 2.3.2.3 Advertisement for Competitive Bids**

The Construction Manager shall advertise for competitive bids for all portions of the Work pursuant to the bid process that shall include (a) preparing invitations for bids and proposals and proposed contract documents; (b) publishing public notice which includes the general nature of the proposed work, fixes the hour, date, time and place where such bids and proposals shall close, or be received or opened, and provides the name and telephone number of a person to be contacted by anyone interested in submitting a bid and proposal to contract for such work in a newspaper of general circulation in the area at least fourteen (14) days prior to bid and proposal opening and providing other public notice; (c) establishing evaluation criteria, interview and selection procedures which may include consultations with one or more bidders according to the requirements of any federal, state, and local laws applicable, with the board giving approval to and making the award of any final contracts; and (d) preparing, signing, executing and delivering all documents, and taking or causing to be taken all other necessary or appropriate action to complete the bidding and proposal process for each contract; and that the above shall and is hereby determined to be the regular manner established by the Owner for advertising for bids and proposals for all contracts for the Project. No bid packages may be advertised for bid until the Owner has approved the scope and content of such bid package.

**§ 2.3.2.3.1** In implementing the forgoing bid process, the Construction Manager shall be generally responsible to including, but not limited to:

#### **§ 2.3.2.3.1.1 Schedule for Letting Bids**

Establish a schedule for letting bids for each portion of the Work pursuant to the schedule for the construction of the Work established for the Project;

#### **§ 2.3.2.3.1.2 Dates for Advertisement of Bids**

Establish dates for advertising for and opening of bids;

#### **§ 2.3.2.3.1.3 Location of Bid Opening and Reading and Availability of Bids**

All bids will be opened at the Construction Manager's designated administrative offices. All submitted bids shall be available for public inspection thereafter after review for completeness during the normal business hours for the Owner's administrative offices; and the Construction Manager shall provide to each submitting bidder a summary of the bids within five (5) business days of the opening of the bids upon written request;

#### **§ 2.3.2.3.1.4 Publication of Bids**

Arrange for publication of advertisement for bids, which publication shall fix the day and hour upon which the bids shall be returned or received, and the date, hour and location the bids will be opened, and that the bids shall be opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close;

#### **§ 2.3.2.3.1.5 Provision of Construction Documents**

Make available to all prospective bidders the Plans and Specifications for the portion of the Work being let for bids upon payment by such prospective bidders for the cost of the Plans and Specifications;

#### **§ 2.3.2.3.1.6 Pre-Bid Conferences**

Be in attendance at and conduct pre-bid conferences with firms interested in submitting bids as Subcontractors following the schedule for the Project;

#### **§ 2.3.2.3.1.7 Specify Required Information from Bidders**

Confirm with all prospective Subcontract bidders that they will provide all information requested of bidders on the Work required by the Owner in the bid documents;

#### **§ 2.3.2.3.1.8 Presence at Bid Openings**

Be present at all bid openings;

#### **§ 2.3.2.3.1.9 Minimum Number of Bids and Evaluation of Bids**

For a bid package to proceed to award there must be not less than three (3) bona fide bids submitted, unless such requirement is waived for good cause by the Owner. "Good cause" shall be determined on a case-by-case basis in consideration of the receipt of competitive nature of the bids received and the progress of the Work. In consultation with the Owner and Architect, evaluate each bid and bidder, and make recommendations to the Owner regarding which bids will be accepted as the lowest responsible bid for portions of the Work being bid; and,

#### **§ 2.3.2.3.1.10 Low Responsible Bidder**

For purposes of the Work of this Agreement, the term "lowest responsible bidder" shall mean financial responsibility, the general ability and capacity of the bidder to perform the Work, the bidder's facilities and suitability for the task, and those qualities which the bidder must necessarily have in order to be able to perform the contract strictly in accordance with its terms.

#### **§ 2.3.2.3.1.11 Construction Manager Assistance in Determining Low Bid**

For purposes of the Work of this Agreement, upon identifying the responsible bidders for a portion of the Work, the Construction Manager shall advise on which of the responsible bidders has submitted the lowest bid. The lowest total price is not always dispositive of this question because public bodies retain an official discretion to determine which bid offers the best value to their constituents. The Owner shall have discretion to award the contract to one other than the lowest of the responsible bidders whenever a submitted bid contains a relevant advantage.

**§ 2.3.2.3.1.11.1** The Construction Manager shall provide to each submitting bidder notice of the bid determined to be the low responsible bidder within ten (10) business days of the determination by the Owner upon written request.

#### **§ 2.3.2.3.2 Bidding by Construction Manager or Related Party**

Init.



Should the Construction Manager or a related party in any way affiliated with the Construction Manager (as that term is defined in § 6.10 below) desire submit a bid for a portion of the Work being let for bids, the same procedures and processes as required of all bidders shall be followed, **PROVIDED that any bid by the Construction Manager or related party must be submitted no less than Twenty-Four (24) hours before all other bids are due to be submitted (unless granted permission otherwise by the Owner)**, and the bid of the Construction Manager or related party may only be accepted if such bid is the lowest responsible dollar amount bid. Any bid by Construction Manager that is accepted by Owner shall be deemed and treated as Self-Performed Work (as described in Section 6.3 below).

#### **§ 2.3.2.3.3 Non-Acceptance by Owner of Low Bid Determined By Construction Manager**

If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are received through the competitive bidding process (1) is determined by the Construction Manager to be the lowest responsible bid; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which 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 in the Work be issued to adjust the schedule of the Work and the Guaranteed Maximum Price by the difference between the bid of the person or entity determined by the Construction Manager to be the low bid and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

#### **§ 2.3.2.3.4 Conformance by Material Suppliers**

Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the bidding provisions herein and the payment provisions of subparagraph 6.2.

#### **§ 2.3.2.3.5 Rebidding of Work**

In cooperation with the Architect and Owner, the Construction Manager shall assist with the rebidding of any portion of the Work for which no satisfactory bid has been received.

#### **§ 2.3.2.3.6 Bid Bonds**

The Construction Manager may require bidders to submit bid bonds or other bid security and, as applicable, evidence of the ability to obtain payment and performance bonds and certificates of insurance acceptable to the Construction Manager and Owner as a prerequisite to bidding on portions of the Work to be performed by Subcontract.

**§ 2.3.2.4** 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, 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 Section 6.11 below.

**§ 2.3.2.5** Unless otherwise agreed by the Owner, Subcontracts shall be between the Construction Manager and the selected Subcontractor. Subcontracts shall contain or incorporate in its entirety the AIA Document A201–2007, General Conditions of the Contract for Construction, as amended.

**§ 2.3.2.6** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.7** 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 to the Owner, the Owner's Designated Representative, and Architect.

**§ 2.3.2.8** 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 submittal schedule in accordance with Section 3.10 of A201–2007. The Owner acknowledges that the Construction Manager's schedule (including all critical path activities and all activities with float) is a working tool that the Construction Manager shall manage as its discretion dictates. The schedule adopted with the acceptance of GMP Amendment is not a Contract Document; however, it does not alter the Construction Manager's obligation to substantially complete the Work by the specified date of Substantial and Final Completion. The Construction Manager may revise the schedule throughout the Project as it deems necessary, and as agreed to by Owner, so long as it does not defer the specified date of Substantial and

Final Completion. As part of its responsibility for the means and methods of construction, the Construction Manager shall have exclusive authority to determine the sequencing and duration of all direct construction schedule activities. As such, the Construction Manager shall have the exclusive use of any float in the schedule, given that float is clearly defined and all critical path activities and durations are agreed upon by the owner. The Construction Manager shall ensure a schedule is available to all Subcontractors and track progress on a daily basis.

**§ 2.3.2.9** 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. The Construction Manager shall also 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.

**§ 2.3.2.10** 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 2.3.2.8 above.

#### **§ 2.4 Professional Services**

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 2.5 Hazardous Materials**

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

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

**§ 3.1.1** 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.

**§ 3.1.2** 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. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

**§ 3.1.3** The Owner shall establish and periodically update the Owner's Construction Budget, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner Contingency, if any, and other costs, and (3) reasonable contingencies related to all of these costs.

**§ 3.1.4 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, as determined by the Owner, 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. The Construction Manager shall notify the Owner and Architect promptly of any actual or perceived inconsistent, incorrect, or inaccurate information discovered by them or their Subcontractors.

§ 3.1.4.1 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.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The 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 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.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.4 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.

### § 3.2 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 A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

#### § 3.2.1 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.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in an agreement between the Owner and an architect and/or engineering or design firm.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRE-BOND ISSUE ELECTION SERVICES (INCLUDING PRECONSTRUCTION PHASE SERVICES)

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's services prior to the bond issue election, the Owner shall compensate the Construction Manager as follows:

#### § 4.1.2

*(Paragraphs deleted)*

The Construction Manager's Fee for pre-bond issue election services, including services as may be required under Sections 2.1 and 2.2, any services by consultants of the Construction Manager and any reimbursable expenses of the Construction Manager, up to the date of the bond issue election shall be as follows, subject to the total compensation limitation provided in this Section:

§ 4.1.2.1 The Construction Manager's Fee for Direct Personnel Expenses of the Construction Manager's personnel and any consultants of the Construction Manager shall be on an hourly basis for the actual hours worked by Construction Manager personnel and/or consultants at the applicable hourly rates set forth on the Efforts Schedule, Appendix "B."

§ 4.1.2.2 The Construction Manager's compensation for reimbursable expenses, if any shall be based on the actual cost of the expense incurred by the Construction Manager, without any markup.

#### § 4.1.3 Direct Personnel Expense

"Direct Personnel Expense" shall mean the direct salaries of all of the Construction Manager's personnel engaged in the Project, and the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, pensions and similar contributions and benefits, and all costs for transportation and subsistence (meals and lodging) relating to the Project.

#### § 4.1.4 Efforts Schedule

The agreed-upon Efforts Schedule for all services of the Construction Manager for the Project is attached as Appendix "B." The Efforts Schedule includes and identifies the positions and specific personnel of the Construction Manager and any outside consultants of the Construction Manager to be assigned to the Project, excluding personnel at the Construction Manager's principal office or offices other than the site office, and setting forth the anticipated maximum number of hours per month that the Construction Manager's project specific personnel assigned to the Project (e.g. the Project Executive, Project Manager and Site Superintendent) will be providing services during the Pre-Bond Issue Election Services and the Post-Bond Issue Election Services, including Preconstruction and Construction Phases) of the Project. The Efforts Schedule specifically provide for personnel hours dedicated to the Project Completion and Warranty Work services to be provided by the Construction Manager. The Efforts Schedule shall also provide for the hourly rates to be charged to the Owner for the Direct Personnel Expense for each of the personnel identified and assigned to the Project by the Construction Manager. The hourly rates on the Efforts Schedule shall be in effect without modification for the entire duration of the Project.

**§ 4.1.5** IN THE EVENT THE LEGAL VOTERS OF THE OWNER DO NOT APPROVE A BOND ISSUE TO FINANCE THE PROJECT, THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE, AND IN SUCH EVENT THE CONSTRUCTION MANAGER SHALL RECEIVE AS FINAL PAYMENT THE SUMS DUE UNDER § 4.1.2 PLUS ANY EXPENSES TO BE REIMBURSED AS PROVIDED FOR HEREIN. THE CONSTRUCTION MANAGER SHALL NOT BE ENTITLED TO ANY OTHER FEES OR COMPENSATION.

#### § 4.2 Payments

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. The progress payment for the Construction Manager's Fee shall be in amounts equal to actual hours worked by Construction Manager personnel and/or consultants during the period covered by the Application for Payment times the hourly rates specified for such personnel, not to exceed the hours and hourly rates shown on the final Efforts Schedule, Appendix "B."

#### § 4.2.2

*(Paragraphs deleted)*

Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after review and action on the Application for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554.

Notwithstanding the requirements of this section, to allow sufficient time for review and action on Applications for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554, the "receipt by the owner or the owner's representative of a payment request made pursuant to the contract" under Neb. Rev. Stat. § 45-1203 shall be deemed to occur at the regular meeting of the Owner's Board of Education immediately following the receipt of the Application for Payment by the Architect.

**§ 4.2.3** Amounts unpaid within the time specified in Section 4.2.2 shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

Twelve % per annum

**§ 4.2.4** The Application for Payment shall include personnel time sheets, if requested by the Owner, and invoices of Costs to be Reimbursed



## **ARTICLE 5 COMPENSATION FOR POST-BOND ISSUE ELECTION SERVICES (INCLUDING PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES)**

**§ 5.1** Contingent upon successful passage of bond issue election to finance the Project, the Construction Manager's post-bond election issue services compensation shall be as follows. For the Construction Manager's services performed after the successful passage of the bond issue election by the legal voters of the Owner, including performance of the Work as described in Sections 2.1 through 2.5, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee described in Section 5.1.1.

### **§ 5.1.1 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.)*

#### **§ 5.1.1.1 Direct Personnel Expense**

The Construction Manager's Fee for Direct Personnel Expenses of the Construction Manager's personnel and any consultants of the Construction Manager shall be on an hourly basis for the actual hours worked by Construction Manager personnel and/or consultants at the applicable hourly rates set forth on the Efforts Schedule, Appendix "B." The Construction Manager's Fee for Direct Personnel Expenses on the Project, including all pre-bond issue election services and post-bond issue election services, shall not shall not exceed the following amounts: For Project A, the amount of EIGHT HUNDRED THIRTY-EIGHT THOUSAND, THREE HUNDRED SEVENTEEN AND 68/100THS DOLLARS (\$838,317.68); for Project B, the amount of FOUR HUNDRED THIRTY-FIVE THOUSAND, EIGHT HUNDRED NINETEEN AND 90/100THS DOLLARS (\$435,819.90).

#### **§ 5.1.1.2 Fee for Corporate Overhead, Profit and Risk**

The Construction Manager's fixed fee to cover the Construction Manager's corporate overhead, profit and risk for the entire Project shall be the amount of TWO PERCENT (2.0%) of the total Cost of the Work for the entire Project as defined herein; PROVIDED that should the Cost of the Work exceed the Guaranteed Maximum Price, the Construction Manager's fee shall be calculated based upon the amount of the Cost of the Work set forth in the Guaranteed Maximum Price. The above Construction Manager's Fee for corporate overhead, profit and risk shall be converted to a lump sum to be included in the Guaranteed Maximum Price.

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

Adjustments on account of changes in the Scope of the Work subsequent to the execution of the Agreement may be the basis for an adjustment of the Construction Manager's Efforts Schedule and attendant MPE; such adjustment shall be determined based upon the revised Schedules and Scope of the Work, and added to the Agreement by addendum.

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

See AIA Document A201-2007, as amended.

*(Paragraphs deleted)*

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall be at or below the amounts as are set forth on the rental rate schedule attached as Attachment F, which rates shall be in effect for the entire duration of the Project. Such rental rates, and all other equipment agreed to be necessary for the Work, shall be included into the accepted Guaranteed Maximum Price Amendment.

*(Table deleted)*

## **§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, Exhibit A, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Paragraphs deleted)*

100% of savings for the Cost of the Work and Contingency shall inure to the benefit of the Owner.

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion and the Date of Final Completion shall be subject to adjustment as provided in the Contract Documents.

### **§ 5.3 Changes in the Work**

**§ 5.3.1** 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment as demonstrated to the Owner by the Construction Manager using the critical path method of scheduling in the Contract Time as a result of changes in the Work as demonstrated to the Owner by the Construction Manager using the critical path method of scheduling.

**§ 5.3.2** 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 Sections 7.2.2 and 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction, or may be determined through mutual agreement of the Owner and Construction Manager or as may be determined by mutual agreement of the Owner and the Construction Manager.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Sections 7.2.2 and 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

*(Paragraph deleted)*

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Cost of the Work shall include the total cost of all Subcontracts and Construction Manager's Self-Performed Work (as defined in Section 6.3 below) for the construction of the Project and site improvements described in the Contract Documents, and other expenses to be reimbursed, as defined in this Article 6. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. The Cost of the Work does not include the Construction Manager's Fee under either Article 4 or 5, unused and unallocated Construction Contingency, or unused and unallocated Owner's Contingency.

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### **§ 6.2 [omit]**

*(Paragraphs deleted)*

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts and the Construction Manager's Self-Performed Work. Subcontracts, bid packages, or any other work that the Owner approves to be performed by or awarded to the Construction Manager, regardless of whether or not Construction Manager utilizes its own forces, shall be on a lump sum basis (the "Self-Performed Work"). The Construction Manager's Self-Performed Work shall not include any work by the Construction Manager's management or office personnel under this Agreement, or any of the work, materials or equipment under Sections 6.4, 6.5, 6.6, or 6.7 of this Agreement.

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

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

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 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.

## **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items (General Conditions / Aid-to-Construction)**

**§ 6.5.1** The Construction Manager, or a Subcontractor upon written authorization of the Construction Manager, may upon approval of the Owner be reimbursed for costs of labor and material for work that is incidental to the construction of the Work of the Project but necessary to maintain the quality, budget and/or schedule of the Work ("Aid-to-Construction"); such reimbursement to be made on a cost basis without markup. Such Aid-to-Construction work need not be bid as long as it is determined to be incidental to the original bid work of a subcontractor by the Owner. The Aid-to-Construction shall be a cost-not-to-exceed line item in the Reimbursable Expense section of the Guaranteed Maximum Price provided by the Construction Manager. Labor rates for Construction Manager personnel providing Aid-to-Construction shall be as indicated in the attached Appendix "H".

**§ 6.5.2** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, seasonal protection, temporary water and utilities, safety measures, 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.

**§ 6.5.3** 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rental rates and rental periods of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. Rental rates and rental periods shall be specified in a manner that maximizes economies of scale. For the avoidance of doubt, rental periods on a weekly basis or other short-term periods should be avoided; rental periods for longer periods of time are preferred. Rental rates shall be set forth on the rental rate schedule attached as Appendix "F," which rates shall be in effect for the entire duration of the Project.

**§ 6.5.4** Costs of cleaning and removal of debris from the site of the Work and its proper and legal disposal, to include all requirements of material separation, recycling, reuse, and disposal to achieve the project goals.

**§ 6.5.5** Costs of document reproduction, phone service at the job site not otherwise provided by Construction Manager, and parcel delivery charges.

**§ 6.5.6** [omit]

**§ 6.5.7** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. Photo documentation, Owner inspection and insurance coverage shall be required prior to payment by the Owner.

## **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, PROVIDED, that the Owner is an exempt entity under the tax laws of the State of Nebraska and is not subject to sales, use or similar taxes.

**§ 6.6.2.1** The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, PROVIDED that the Contractor fulfills the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Construction Manager may be required to segregate materials and labor costs at the time a Contract for the Work is awarded. Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. Construction Manager shall obtain Resale Certificates from Contractor's suppliers. Failure of Contractor or any Sub-Contractor to obtain Resale Certificates from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Construction Manager shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. THE CONSTRUCTION MANAGER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

**§ 6.6.3** Unless agreed to be paid by the Owner, 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 or any governmental or quasi-governmental authority to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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

*(Paragraphs deleted)*

## **§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** 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 Section 10.4 of AIA Document A201–2007.

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

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 and including the General Conditions costs shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 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 6.8.



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

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

- .1 Salaries and other compensation of the Construction Manager's personnel, regardless of location, whether stationed at the Construction Manager's principal office or offices other than the site office;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 [omit]
- .10 The unused and unallocated portions of the Construction Contingency.

## **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** 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 them 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.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** 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, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

## **§ 6.11 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, daily diaries, superintendent reports, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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. Amounts paid for Construction Manager's Self-Performed Work are not subject to audit for actual cost.

## **ARTICLE 7 PAYMENTS FOR POST-BOND ISSUE ELECTION SERVICES (INCLUDING CONSTRUCTION PHASE SERVICES)**

### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Owner, Owner's Designated Representative, and 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.

### **§ 7.1.2 Payment of Construction Manager's Compensation**

#### **§ 7.1.2.1 Payment of Construction Manager's Compensation for Preconstruction and Construction Phase Personnel Services**

Based upon Applications for Payment submitted to the Architect by the Construction Manager, the Owner shall make progress payments to the Construction Manager as compensation for post-bond issue election Preconstruction and Construction Phase Personnel services for Direct Personnel Expense for actual hours worked by Construction Manager personnel for supervision of the Work as provided below and elsewhere in the Contract Documents.

**§ 7.1.2.1.1** The period covered by each Application for Payment submitted by the Construction Manager for Preconstruction and Construction Phase Personnel services shall be one (1) calendar month ending on the last day of the month.

**§ 7.1.2.1.2** The portion of the Construction Manager's Compensation for Preconstruction and Construction Phase Personnel services to be paid with each Application for Payment shall be determined by the actual hours worked by the Construction Manager's personnel for the Project as confirmed by the Project Architect and Owner.

#### **§ 7.1.2.2 Payment of Construction Manager's Fee for Corporate Overhead, Profit and Risk**

Based upon Applications for Payment submitted to the Owner by the Construction Manager, the Owner shall make progress payments to the Construction Manager of the Construction Manager's Fee for Corporate Overhead, Profit and Risk, based on the Construction Manager's GMP amount pending determination of final cost of the work, subject to a retainage amount of FIVE PERCENT (5%) to be held by the Owner. Payment of the Construction Manager's Fee for Corporate Overhead, Profit and Risk (OPR Fee) shall be made in proportion of the Cost of the Work completed based upon the following formula:

$$\text{Progress Fee amount} = \frac{\text{Construction Manager's Fee (in dollars, calculated per Section 5.1.1)}}{\text{Total months (between Bond Election and last in time Substantial Completion date)}}$$

The OPR Fee shall be subject to the retainage in the amount of FIVE PERCENT (5%).

### **§ 7.1.2.3 Final Payment of Construction Manager's Compensation**

#### **§ 7.1.2.3.1 Conditions of Final Payment**

Final payment of the Construction Manager's Compensation for Preconstruction and Construction Phase Personnel services and Construction Manager's Fee for Corporate Overhead, Profit and Risk, including any retainage held by the Owner shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager, including the Construction Manager's correction of nonconforming Work to the satisfaction of the Owner; (2) a final Application for Payment of all Subcontracts has been received and approved by the Owner; (3) a final accounting for the Expenses to be Reimbursed has been submitted by the Construction Manager and reviewed and approved by the Owner; (4) a final Certificate for Payment has then been issued by the Owner to all Subcontractors; and (5) the Architect has certified the total Cost of the Work for the Project pursuant to Paragraph 1.4.3. Such final payment of the Construction Manager's Compensation for Pre-Construction and Construction Phase Personnel services and Construction Manager's Fee for Corporate Overhead, Profit and Risk shall be made by the Owner not more than THIRTY (30) days after the issuance of the Owner's final Certificate for Payment to all Subcontractors. The amount of the final payment of the Construction Manager's Compensation shall be calculated pursuant to the provisions of Article 4 and Article 5.

### § 7.1.3 Payment of Cost of The Work and Reimbursable Expenses

Payment of the Cost of the Work, including all Subcontracts and Self-Performed Work by the Construction Manager for the performance of the Work of the Project, and of all reimbursable expenses pursuant to Article 6 shall be governed by subparagraph 7.1.3 through 7.2.4 hereof.

§ 7.1.4 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after review and action on the Application for Payment by the Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554. Notwithstanding the requirements of this section, to allow sufficient time for review and action on Applications for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554, the "receipt by the owner or the owner's representative of a payment request made pursuant to the contract" under Neb. Rev. Stat. § 45-1203 shall be deemed to occur at the regular meeting of the Owner's Board of Education immediately following the receipt of the Application for Payment by the Architect.

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

§ 7.1.5.1 In taking action on the Construction Manager's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data and that the Owner has made exhaustive or continuous on-site inspections or that the Owner 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 accountants acting in the interests of the Owner.

§ 7.1.6 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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require, including but not limited to Subcontractors' and supplier breakdowns of their respective costs into a schedule of values for such work. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.7 Applications for Payment shall show the percentage of completion of each portion of the Work

*(Paragraphs deleted)*

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 for which the Construction Manager has made or intends to make actual 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.

§ 7.1.8 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take 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 schedule of values, and subtract retainage of no more than TEN percent ( 10 %) when the scope of Work for the Project from which retainage is withheld is Fifty percent (50%) complete or less, and retainage of no more than

FIVE percent (5%) when the scope of Work for the Project from which retainage is withheld is more than Fifty percent (50%) complete. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, and subtract retainage of no more than TEN percent ( 10 %) when the scope of Work for the Project from which retainage is withheld is Fifty percent (50%) complete or less, and retainage of no more than FIVE percent (5%) when the scope of Work for the Project from which retainage is withheld is more than Fifty percent (50%) complete;
- .3 Add the Construction Manager's Fee, and subtract retainage in the amount of TEN percent (10%) when the scope of Work for the Project from which retainage is withheld is Fifty percent (50%) complete or less, and retainage of no more than FIVE percent (5%) when the scope of Work for the Project from which retainage is withheld is more than Fifty percent (50%) complete. The Construction Manager's Fee shall be computed as a dollar amount based the method and at the rate stated in Section 5.1.
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

**§ 7.1.9** The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the Construction Manager shall execute subcontracts in accordance with those agreements and this Agreement.

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

**§ 7.1.11** 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 shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or 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.

## **§ 7.2 Final Payment**

**§ 7.2.1** 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 Section 12.2.2 of AIA Document A201–2007, 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;
- .3 a final Certificate for Payment has been issued by the Architect.;
- .4 the Architect has certified the total Cost of the Work for the Project pursuant to Section 1.4.4.
- .5 the Construction manager has submitted an AIA Document G707 consent of surety, if any, to final payment;
- .6 the Construction Manager has submitted notarized Subcontractor lien releases using AIA Document G706A;
- .7 the Construction Manager has submitted receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement and Subcontracts, to the extent and in such form as may be designated by the Owner;



- .8 the Construction Manager has submitted a Department of Labor Division of Employment Form No. 16, Certificate of Contribution Status, from the State of Nebraska Department of Labor certifying that the Construction Manager and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the last in time date of Substantial Completion;
- .9 the Construction Manager has submitted all Subcontractor's warranties, and maintenance and instruction manuals; and
- .10 the Construction Manager has submitted Record drawings and "as-built" drawings.

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:

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner and Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be 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 Section 15.2 of A201–2007. 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.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

**§ 7.2.5 Payment Contingent upon Availability of Appropriated Funds or Funds Approved by Owner's Board of Education** Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of the Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof. See Article 10 for termination and fees upon termination.

## ARTICLE 8 INSURANCE AND BONDS

**§ 8.1** For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.  
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Workers' Compensation and Employer's Liability	See AIA A201, Article 11
Automobile Liability	See AIA A201, Article 11
Commercial General Liability	See AIA A201, Article 11
Excess Liability	See AIA A201, Article 11

Init.

**§ 8.1.1** Coverages, written on an occurrence basis, shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

**§ 8.1.2** Certificates of insurance acceptable to the Owner shall be filed by the Contractor with the Owner prior to commencement of the Contractor's Work. The insurance certificates shall be attached and incorporated to the Agreement as Appendix "E". These certificates and the insurance policies required by this Article 8 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

### **§ 8.3 Performance and Payment Bond**

The Construction Manager shall as required by Neb. Rev. Stat. § 52-118 furnish payment and performance bonds covering faithful performance of this Agreement, including all Work, and payment of obligations arising thereunder. The Construction Manager shall submit payment and performance bonds to the Owner prior to the commencement of any Work by the Construction Manager. Such payment and performance bonds shall be attached and incorporated to the Agreement at Appendix "D."

#### **§ 8.3.1 Pre-GMP Performance and Payment Bond Amounts**

Prior to approval by the Owner of the final negotiated GMP, the total amount of each of the Construction Manager's payment and performance bonds during this phase of the Project shall be the sum total of the following: (1) the Construction Manager's Compensation set forth in Articles 4 and 5 of this Agreement; and (2) the total contract amount for all Subcontracts awarded prior to approval of the GMP.

#### **§ 8.3.2 Post-GMP Performance and Payment Bond Amounts**

Upon approval by the Owner of the final negotiated GMP, the total amount of the Construction Manager's payment and performance bond shall be the sum total of the GMP amount.

#### **§ 8.3.3 Allowance for Subcontractor Performance and Payment Bonds**

In subcontracting Work on the Project, the Construction Manager with prior written approval of the Owner, may require certain subcontractors on certain portions of the Work to obtain and furnish performance and payment bonds in the amount of such subcontract sums.

## **ARTICLE 9 DISPUTE RESOLUTION**

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. 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 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

### **§ 9.3 Initial Decision Maker**

Init.

The Architect will serve as the Initial Decision Maker for claims arising from or relating to the Construction Manager's services.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

Not applicable

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 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 10.1.2:

- .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 5.1 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.

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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. 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 10, 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.

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.

### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **§ 10.4 Termination upon Failure of Bond Issue Election**

In the event the legal voters of the Owner do not approve a bond issue to finance the Project at an election called for such purpose, this Agreement shall automatically terminate. The Construction Manager shall only be entitled to the compensation, if any, described in Article 4.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007, as amended and attached hereto.

### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases, as amended and attached hereto. The Drawings, Specifications and other documents prepared by the Architect and copies thereof furnished to the Construction Manager are for use solely with respect to this Project. Such documents are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

### **§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases, as amended and attached hereto. The Agreement shall be governed by the laws of the State of Nebraska and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be Sarpy County, Nebraska.

### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, as amended and attached hereto, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **§ 11.5 Other provisions:**

#### **§ 11.5.1 Acts or Omissions of Construction Manager's Employees**

The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or any of its Subcontractors. As part of that responsibility, Construction Manager shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Construction Manager's employees, subcontractors, and all other persons carrying out the Contract.

#### **§ 11.5.2 Use of Job Site and Security**

##### **§ 11.5.2.1 Job Site Security and Construction Fencing**



The Construction Manager shall be responsible for overall job site safety and security under Article 10 of AIA Document A201. Without limiting the foregoing, the Construction Manager shall install and maintain job site perimeter construction fencing, signage and other warnings pursuant to Section 10.2 of AIA Document A201. Construction fencing in and around the job site must be erected before any construction work, excavation or other site preparation begins, including repair to existing infrastructure. Design of all construction fencing must meet current OSHA standards. Construction fencing needs to be installed to prevent access from the Owner's staff, students and the general public to any construction sites/areas. Construction fencing will surround the entire job site and construction activity and be kept in place throughout the construction activity and not removed until the need has ceased, and the area made safe. Placement of any construction fencing needs to respect the surrounding area and acknowledge the presence of local environmental conditions – access or pathways, stairs, trees or vegetation, weather, equipment, working inside or outside etc. Placement of construction fencing also needs to recognize the difficulties that individuals with sight impairment face and not place them in danger through unexpected changes in travel routes or placement of obstacles. Placement of any construction fencing is to be reviewed by the Owner and its Risk Management Department. Where required, warning lights (i.e. orange flashing lights) may be required for safety reasons, and placement to be in accordance with OSHA standards.

#### **§ 11.5.2.2 Vehicle Parking**

The Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

#### **§ 11.5.2.3 Theft Deterrence Program**

The Construction Manager shall consult and coordinate with the Owner with analysis of cost of the institution of a theft deterrence program designed to restrict construction worker access to properties of the Owner that are currently in use, to maintain supervision of the Construction Manager's and the Construction Manager's Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from the Construction Manager's forces or the Construction Manager's Subcontractor's forces' actions, omissions, or failure to secure the Work or adjoining property.

#### **§ 11.5.3 Equal Opportunity in Employment**

**§ 11.5.3.1** The Construction Manager and all Subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, because of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status, as prohibited by the Nebraska Fair Employment Practice Act or federal law. The Construction Manager agrees to post in conspicuous places available to employees and applicants, notices setting forth the Construction Manager's nondiscrimination policies. The Construction Manager and the Construction Manager's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status.

**§ 11.5.3.2** The Construction Manager hereby warrants and represents that it is in compliance with said Act. Any failure to so comply during the performance of this Agreement shall be a material breach of the Agreement. The Construction Manager by execution of this agreement certifies that the Construction Manager is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants as well as historically underutilized business subcontractors, and does not discriminate against any employee or applicant for employment or subcontractor by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. By execution of this agreement, the Construction Manager agrees to actively continue and implement this policy throughout any awarded project.

#### **§ 11.5.4 Compliance with Law**

As a material term of this Agreement, the Construction Manager shall at all times comply with all applicable federal and state statutes and local ordinances related to the Project. With regard to the supervision of Subcontractors performing the work of the Project, the Construction Manager shall be responsible for determining the applicability of such codes, ordinances, rules, and regulations to work of the Project, except those applicable to the design services of the Architect; for investigating, confirming and/or verifying compliance therewith; for filing of all documents that are

required for compliance therewith; and for obtaining the approval of governmental authorities having jurisdiction over the Project. In addition, if not covered by the municipality's tree ordinance, the Construction Manager shall barricade and protect all trees on the Project.

#### **§ 11.5.5 Criminal History Checks**

**§ 11.5.5.1** The Construction Manager shall obtain all criminal history information regarding its "covered employees", as defined below. Before beginning any Work on the Project, Construction Manager, and all Subcontractors and suppliers, will provide written certification to the Owner that the Construction Manager has complied with the statutory requirements as of that date. Upon request by Owner, the Construction Manager will provide, in writing, updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. The Construction Manager shall assume all expenses associated with obtaining the initial criminal history record information and the Owner shall be responsible for expenses associated with any subsequent request. The Construction Manager shall include similar criminal history check provisions in all contracts with subcontractors and suppliers. The Construction Manager's Job Site Security Protocols are attached and incorporated as Appendix "C."

**§ 11.5.5.2** The Construction Manager will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If the Construction Manager receives information that a covered employee has a reported disqualifying criminal history, then the Construction Manager will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then the Construction Manager agrees to discontinue using that covered employee to provide services on Owner's Project.

**§ 11.5.5.3** For the purposes of this Section, "covered employees" means employees, agents or Subcontractors of the Construction Manager who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner or one of the following offenses: if at the time of the offense, the victim was under 19 years of age or enrolled in a public school; a felony offense under Nebraska Criminal Code Article 3 Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under the Nebraska Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 et seq.; or an equivalent offense under federal law or the laws of another state. The Owner may take into consideration the nature and circumstances of the criminal history to assure its interests in protecting school children and in its discretion determine individual can serve on Owner's Project.

**§ 11.5.5.4** The Construction Manager shall establish a construction site security protocol which shall include providing all employees of the Construction Manager, contractors, Subcontractors, material suppliers and other Project related personnel with a "Project" badge or sticker containing a unique identifier number. This unique identifier number must be logged by the Construction Manager's Site Superintendent or Project Manager so as to associate each individual's name and company with the number on the badge. A copy of the log shall be kept at all times in the office of the Construction Manager's Site Superintendent and must be submitted to the Owner at the end of each week. If wearing the Construction Manager-provided "Project" badge will interfere with the work being performed by that individual, the Construction Manager shall provide a sticker with the necessary information for identification for the affected individual, which shall include the unique number on the identification. This sticker may be affixed to the individual worker's hard hats. All means of identification other than what is provided by the Construction Manager must be approved by the Construction Manager's Site Superintendent or Project Manager prior to implementation by the Construction Manager. Identification must be visible at all times. Individuals failing to comply with the job-site security requirements may be required by the Construction Manager or the Owner to leave the job-site.

#### **§ 11.5.6 Contributions under Nebraska Employment Security Law**

The Construction Manager and all Subcontractors engaged to perform any part of the Work shall make payment to the Unemployment Compensation Fund of the State of Nebraska of all contributions and interest due under the provisions of the Employment Security Law, Neb. Rev. Stat. §§ 48-601, et seq. (Reissue 1988), as amended, on wages paid to individuals employed in the performance of the Contract; and before final payment shall be made of the final three percent (3%) of this Contract, the Construction Manager shall secure and file with the Owner, and cause any Subcontractor to secure and file with the Owner, written clearance from the Commissioner of the Department of Labor

of the State of Nebraska, certifying that all payments then due of contributions or interest which may have arisen under this Contract have been made by the Construction Manager or any Subcontractor to the Unemployment Compensation Fund.

#### **§ 11.5.7 Verification of Immigration Status**

The Construction Manager agrees to use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. This requirement applies to all Subcontractors of the Construction Manager. The Construction Manager shall, by written agreement, require compliance with the federal immigration verification system by all Subcontractors. If the Construction Manager is an individual or sole proprietorship, the following applies:

- .1 The Construction Manager must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
- .2 If the Construction Manager indicates on such attestation form that he or she is a qualified alien, the Construction Manager agrees to provide the US Citizenship and Immigration Services documentation required to verify the Construction Manager's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- .3 The Construction Manager understands and agrees that lawful presence in the United States is required and the Construction Manager may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

#### **§ 11.5.8 Nebraska Employee Classification Act**

The Construction Manager agrees to abide by the provisions of the Nebraska Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912. The Construction Manager also agrees to require each Subcontractor to abide by the same statute. In compliance with that Act, the Construction Manager shall submit to the Owner, upon execution of the Agreement, the affidavit marked as Appendix "G," attached hereto and incorporated herein by this reference. The Construction Manager further acknowledges that providing a false affidavit under Neb. Rev. Stat. § 48-2911 may subject the Construction Manager to the penalties of perjury and upon a second or subsequent violation the Construction Manager shall be barred from contracting with the State of Nebraska or any Nebraska political subdivision for a period of three (3) years after the date of discovery of the falsehood. The Construction Manager shall require any and all Subcontractors who perform work pursuant to the Agreement to provide a similar affidavit, which shall be made available to the Owner upon request.

#### **§ 11.5.9 Limited Mutual Waiver of Consequential Damages**

Except for those losses covered by insurance required by the Contract Documents and specific items of damages allowed for in this Agreement and in the Contract Documents, the Construction Manager and the Owner waive all Claims against each other for consequential damages arising out of or relating to this Contract, including consequential damages due to either party's termination of this Agreement.

#### **§ 11.5.10 Sovereign Immunity**

By entering into this Agreement, the Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

#### **§ 11.5.11 Force Majeure**

None of the parties hereto shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

#### **§ 11.5.12 Independent Contractor**

The Construction Manager shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. The Construction Manager shall assume sole responsibility for any debts or liabilities that may be incurred by Construction Manager in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing Construction Manager or its agents and/or employees to act as an agent or representative of or on behalf of the Owner, or to incur any obligation of any kind on behalf of the Owner. Construction Manager agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner employees will extend to the benefit of Construction Manager or the Construction Manager's agents and/or employees as a result of this Agreement.

#### **§ 11.5.13 Kickbacks**

The Construction Manager certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Construction Manager breaches or violates this warranty, the Owner may, at its discretion, terminate this Agreement without liability to the Owner, or deduct from the Agreement price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

#### **§ 11.5.14 Notice**

All notices or invoices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

#### **§ 11.5.15 Severability**

This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

#### **§ 11.5.16 No Waiver of Rights**

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

#### **§ 11.5.17 Warranty**

The Construction Manager warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing construction management services under similar circumstances, and with the requirements of the Contract Documents; and it is responsible for the construction of the Work of the Project in accordance with all designs, drawings, specifications, and other services furnished by the Owner through the Architect for the Project.

### **ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** 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.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133–2009, 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 A201–2007, General Conditions of the Contract for Construction
- .3



(Paragraphs deleted)

Other documents:

(List other documents, if any, forming part of the Agreement.)

Appendix "A" – Excel 16 Division Spreadsheet Report  
Appendix "B" – Construction Manager's Efforts Schedule:  
Appendix "C" – Job Site Security Requirements  
Appendix "D" – Construction Manager Payment and Performance Bonds  
Appendix "E" – Construction Manager Certificate of Insurance  
Appendix "F" – Construction Manager Rental Rate Schedule  
Appendix "G" – Construction Manager's Affidavit  
Appendix "H" – Construction Manager Labor Rates for Aid-to-Construction Work

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

**SARPY COUNTY SCHOOL DISTRICT 77-0046, a/k/a  
SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS**

**BOYD JONES CONSTRUCTION COMPANY**

**OWNER** (Signature)

Cori Swanson, President Board of Education

(Name/Title)

(Row deleted)

**CONSTRUCTION MANAGER AT RISK**

Tim Meyer, Sr. V.P. Operations

(Name/Title)

## APPENDIX A - AIA Document A133 - 2009

## 16 DIVISION REPORT

## SPRINGFIELD-PLATTEVIEW COMMUNITY SCHOOLS - ELEMENTARY SCHOOLS PROJECTS

[illegible]

## 16 DIVISION REPORT

Group	Phase	Description	Taken On Quantity	Labor Cost/Unit	Labor Amount	Material Cost/Unit	Material Amount	Sub Cost/ Unit	Sub Amount	Equip Cost/Unit	Equip Amount	Total Cost/Unit	Total Amount
		THERM & MOIST PROTECTION		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
8000.000		DOORS AND WINDOWS											
	8100.000	Metal Doors & Frames & Hardware Material											
	8210.000	Wood Doors											
	8305.000	Access Doors											
	8330.000	Coiling Doors and Grilles											
	8360.000	Sectional Overhead Doors											
	8390.000	Storm Doors/Overhead Coiling Storm Shutters											
	8410.000	Aluminum Entrances											
	8520.000	Aluminum Windows											
	8700.000	Finish Hardware Installation Labor											
	8720.000	Door Operators											
	8800.000	Mirrors											
		DOORS AND WINDOWS		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
9000.000		FINISHES											
	9200.000	Plaster Finish Sys Ceilings											
	9250.000	Gypsum Board											
	9300.000	Tile											
	9510.000	Acoustical Ceilings											
	9550.000	Gymnasium Floor Sys Wood Flooring											
	9650.000	Vct Flooring											
	9660.000	Synthetic Athletic Flooring											
	9675.000	Epoxy Flooring											
	9680.000	Carpet											
	9900.000	Painting											
		FINISHES		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
10000.000		SPECIALTIES											
	10100.000	Chalk & Tack Boards											
	10150.000	Compartments & Cubicles											
	10160.000	Toilet Partitions											
	10260.000	Corner Guards/Crash Rails											
	10350.000	Flag Poles											
	10430.000	Exterior Signs											
	10440.000	Interior Signs											
	10500.000	Lockers											
	10520.000	Fire Protect. Specialties											
	10652.000	Operable Partitions											
	10800.000	Toilet & Bath Accessories											
		SPECIALTIES		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
11000.000		EQUIPMENT											
	11130.000	Audio - Visual Screens											
	11400.000	Food Service Equipment											
	11450.000	Residential Equipment											
	11490.000	Gymnasium Equipment											
	11610.000	Laboratory Fume Hoods											
		EQUIPMENT		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
12000.000		FURNISHINGS											
	12500.000	Window Treatment											
	12760.000	Gymnasium Bleachers											
		FURNISHINGS		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
14000.000		CONVEYING SYSTEMS											
	14200.000	Elevator											

**APPENDIX A - AIA Document A133 - 2009**

**16 DIVISION REPORT**

**SPRINGFIELD-PLATTEVIEW COMMUNITY SCHOOLS - ELEMENTARY SCHOOLS PROJECTS**

Group	Phase	Description	Takeoff Quantity	Labor Cost/Unit	Labor Amount	Material Cost/Unit	Material Amount	Sub Cost/ Unit	Sub Amount	Equip Cost/Unit	Equip Amount	Total Cost/Unit	Total Amount
	15000.100	Complete Mechanical											
	15300.000	Fire Protection											
	15400.000	Plumbing											
	15495.000	Site Utilities											
	15500.000	HVAC Systems											
	15950.000	Controls											
	15990.000	Test, Adjust and Balance											
		<b>MECHANICAL</b>		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
<b>16000.000</b>		<b>ELECTRICAL</b>											
	16010.000	Electrial Complete											
	16720.000	Fire Alarm/Detection Sys											
	16740.000	Data Cabling											
	17000.000	Security Electronics											
		<b>ELECTRICAL</b>		0.00	0	0.00	0	0.00	0	0.00	0	0.00	0



		PROJECT EXECUTIVE	PROJECT MANAGER	SITE SUPER.	OTHER PROJECT PERSONNEL			
		Tim Meyer	Sean Yahnke	Tim Donovan	Project Engineer	Safety Director	Preconstruction Director	
Hrly Rate		\$186.38	\$150.17	\$108.63	\$89.46	\$132.06	\$165.08	
2020	Jan	5	10	0	0	0	10	25
	Feb	5	10	0	0	0	10	25
	Mar	5	10	0	0	0	10	25
	Apr	5	10	0	0	0	10	25
	May	5	10	0	0	0	10	25
	Jun	5	10	0	0	0	20	35
	Jul	5	10	0	0	0	20	35
	Aug	5	10	0	0	0	10	25
	Sep	5	10	0	0	0	10	25
	Oct	5	10	0	0	0	10	25
	Nov	5	10	0	0	0	20	35
	Dec	5	10	0	0	0	40	55
2021	Jan	5	80	0	0	0	20	105
	Feb	5	80	80	72	0	10	247
	Mar	5	92	184	125	8	0	414
	Apr	5	88	176	119	8	0	396
	May	5	80	160	108	8	0	361
	Jun	5	88	176	119	8	0	396
	Jul	5	84	168	114	8	0	379
	Aug	5	88	176	119	8	0	396
	Sep	5	84	168	114	8	0	379
	Oct	5	80	160	108	8	0	361
	Nov	5	80	160	108	8	0	361
	Dec	5	84	168	114	8	0	379
2022	Jan	5	80	160	108	8	0	361
	Feb	5	76	152	103	8	0	344
	Mar	5	92	184	125	8	0	414
	Apr	5	84	168	114	8	0	379
	May	5	84	168	114	8	0	379
	Jun	5	88	176	119	8	0	396
	Jul	5	80	160	108	8	0	361
Subtotal Hours		155	1712	2944	2011	136	210	7168
Subtotal MPE		\$28,888.90	\$257,091.04	\$319,806.72	\$179,904.06	\$17,960.16	\$34,666.80	
						Total MPE	\$838,317.68	

		PROJECT EXECUTIVE	PROJECT MANAGER	SITE SUPER.	OTHER PROJECT PERSONNEL			
		Tim Meyer	Sean Yahnke	Superintendent	Project Engineer	Safety Director	Preconstruction Director	
Hrly Rate		\$186.38	\$150.17	\$108.63	\$89.46	\$132.06	\$165.08	
2020	Jan	0	0	0	0	0	0	0
	Feb	0	0	0	0	0	0	0
	Mar	0	0	0	0	0	0	0
	Apr	0	0	0	0	0	0	0
	May	0	0	0	0	0	0	0
	Jun	5	5	0	0	0	10	20
	Jul	5	5	0	0	0	10	20
	Aug	5	5	0	0	0	10	20
	Sep	5	5	0	0	0	10	20
	Oct	5	5	0	0	0	10	20
	Nov	5	5	0	0	0	10	20
	Dec	5	5	0	0	0	10	20
2021	Jan	5	5	0	0	0	10	20
	Feb	5	5	0	0	0	40	50
	Mar	5	5	0	0	0	10	20
	Apr	5	80	0	0	0	5	90
	May	5	80	80	36	0	5	206
	Jun	5	44	176	40	8	0	273
	Jul	5	42	168	38	8	0	261
	Aug	5	44	176	40	8	0	273
	Sep	5	42	168	38	8	0	261
	Oct	5	40	160	36	8	0	249
	Nov	5	40	160	36	8	0	249
	Dec	5	42	168	38	8	0	261
2020	Jan	5	40	160	36	8	0	249
	Feb	5	38	152	35	8	0	238
	Mar	5	46	184	42	8	0	285
	Apr	5	42	168	38	8	0	261
	May	5	42	168	38	8	0	261
	Jun	0	0	0	0	0	0	0
	Jul	0	0	0	0	0	0	0
Subtotal Hours		120	712	2088	491	96	140	3647
Subtotal MPE		\$22,365.60	\$106,921.04	\$226,819.44	\$43,924.86	\$12,677.76	\$23,111.20	
						Total MPE	\$435,819.90	

## **Appendix "C"**

### **JOB SITE SECURITY REQUIREMENTS**

The Springfield Platteview Community Schools– AIA A201, General Conditions of Contract for Construction provides as follows:

#### **§ 3.4.8 CRIMINAL HISTORY CHECKS**

**§ 3.4.8.1** Contractor shall obtain all criminal history information regarding the "covered employees", as defined below, of the Contractor and certifications of criminal history compliance from all agents and subcontractors of the Contractor. Before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor has complied with the statutory requirements as of that date. Upon request by Owner, Contractor will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

**§ 3.4.8.2** Contractor will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

**§ 3.4.8.3** For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses: if at the time of the offense, the victim was under 19 years of age or enrolled in a public school: a felony offense under Nebraska Criminal Code Article 3 Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under the Nebraska Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 et seq.; or an equivalent offense under federal law or the laws of another state. The Owner may take into consideration the nature and circumstances of the criminal history to assure its interests in protecting school children and in its discretion determine individual can serve on Owner's Project.

#### **§ 3.4.8.4 OWNER'S ADDITIONAL REQUIREMENTS RELATED TO CRIMINAL HISTORIES**

In addition, Contractor will at least annually obtain criminal history record information that relates to any employee of the Contractor and certifications of criminal history compliance from all agents, or subcontractors of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or, other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present".

## Job-Site Security Protocol:

1. Prior to performing any work or entering on the Project site, all contractors and subcontractors, and suppliers and materialmen shall sign a "Contractor/Supplier Criminal Records Certification," a copy of which is attached hereto, certifying that such contractor shall not assign to work on the Springfield Platteview Community Schools building project an employee having a criminal record as defined by the Owner's policy, regulations, practices or directives, including but not limited to any of the following: (a) a felony; (b) rape, including statutory rape, or any other sexual assault; (c) sexual conduct with a minor of any kind; (d) abuse of a minor or child of any kind; (e) endangerment of a child or debauching a minor; (f) public indecency; (g) prostitution, pandering, or keeping a place of prostitution; (h) assault or battery; (i) kidnapping, false imprisonment or abduction; (j) child pornography; or (k) any offense in which a minor was a victim or a witness. Such certification shall remain on file at all times during the contractor's presence on the site.

2. The Contractor shall establish a school building construction site security protocol which shall include providing all employees of the contractors, employees of sub-contractors to the contractors, and other project related personnel with a "Project" badge or sticker created by the Contractor; each badge or sticker shall have a unique identifier number. This unique identifier number must be logged by the Contractor's Site Superintendent or Owner's Representative so as to associate each individual's name and company with the number on the badge. A copy of the log shall be kept at all times in the office of the Contractor's Site Superintendent and must be submitted to the Owner's superintendent's office at the end of each week. If wearing the Contractor-provided "Project" badge is not desirable and will interfere with the work being performed by that individual, the Contractor shall provide a sticker with the necessary information for identification for affected personnel, which shall include the unique number on the identification. This sticker may be affixed to the individual worker's hard hats. All means of identification other than what is provided by the Contractor must be approved by the Contractor's on-site Superintendent or Owner's Representative prior to implementation by the contractor. Identification must be visible at all times. Personnel failing to comply with the job-site security requirements may be required by the Contractor or Springfield Platteview Community Schools personnel to leave the job-site.

3. A copy of the list of properly certified works and other personnel authorized to be on the work site shall be provided by each contractor to the Owner's Representative for the Project and kept in the on-site offices.

**Springfield Platteview Community Schools**  
**Contractor/Subcontractor/Supplier Criminal Records Certification**

Our firm hereby certifies and agrees not to knowingly assign or knowingly allow any individual or agent to do any work at the Springfield Platteview Community Schools on the project located in Springfield, Nebraska, or other locations under the Contract entered into between our firm and the Springfield Platteview Community Schools who has a criminal record of a serious nature as defined by Springfield Platteview Community Schools policy, regulations, practices or directives, and as expressed in the “Springfield Platteview Community Schools – Criminal Records Directive”. A list of individual workers complying with this Directive is attached.

Our firm authorizes, gives consent, and agrees to periodically certify same to Springfield Platteview Community Schools. Our firm further authorizes, gives consent, and agrees to cooperate in obtaining any additional authorization or consent necessary, to assure compliance with this requirement, and to immediately reassign and remove any individual or agent from the work site who the firm learns is not in full compliance with the requirements of this Certification.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Name of Contract Vendor

By:

\_\_\_\_\_  
An Authorized Official

## **Springfield Platteview Community Schools Criminal Records Directive**

(a) Definitions

1. "Crimes of a Serious Nature."

- a. Convictions for certain crimes, no matter when committed, will constitute "crimes of a serious nature." These crimes include convictions for the following: (i) a felony involving murder, manslaughter, personal injury to another, assault, battery, other use of a weapon of any kind or manner; (ii) a felony involving rape, including statutory rape, or any other sexual assault; (iii) a felony or misdemeanor involving sexual conduct with a minor of any kind; (iv) a felony or misdemeanor involving abuse of a minor or child of any kind; (v) a felony or misdemeanor involving endangerment of a child or debauching a minor; (vi) a felony or misdemeanor kidnapping, false imprisonment or abduction; or (vii) a felony or misdemeanor for child pornography.
- b. Convictions for the following crimes committed in the 7 years prior to when the employee is to work at the site of an awarded project will constitute "crimes of a serious nature:" (i) a felony involving the theft of money or property of a value of more than \$1,000; (ii) a felony involving prostitution, pandering, or keeping a place of prostitution; (iii) a felony involving public indecency; (iv) a felony for drug possession or sales; and (v) a felony for DUI.

2. "Site of an Awarded Project" shall be defined to include the location of the physical work to be completed on the project where it is expected that minors under the age of 16 will be present on a regular basis during the completion of the contractors' scope of the work. The Site of an Awarded Project shall not include a Contractor's, Subcontractor's, or Supplier's home office.

(b) To help prevent any individuals or agents who have committed crimes of a serious nature from working at the site of an awarded project, the Contractor shall:

1. Require that each of its employees who are to work at the Site of an Awarded Project to complete the "Criminal Record Disclosure" prior to when the employee is to begin work at the Site of an Awarded Project.

Unless the Contractor has actual or constructive knowledge that an employee omitted information or misrepresented information in completing the Criminal Record Disclosure, the Contractor shall not be liable for damages incurred as a direct or indirect result of such omission or misrepresentation.

2. Include this provision in each of its subcontracts and require that each of its Subcontractors' employees complete the Criminal Record Disclosure prior to when the Subcontractor's employee is to begin work at Site of an Awarded Project.

Unless the Contractor or Subcontractor has actual or constructive knowledge that an employee omitted information or misrepresented information in completing the Criminal Record Disclosure, neither the Contractor nor the Subcontractor shall be liable for damages incurred as a direct or indirect result of such omission or misrepresentation.

3. Include this provision in each of its Supplier agreements where supplies are to be delivered to the Site of an Awarded Project by the Supplier and require that each of such Suppliers' employees complete the Criminal Record Disclosure prior to when the Supplier's employee is to deliver the supplies to the Site of an Awarded Project.

Unless the Contractor or Supplier has actual or constructive knowledge that an employee omitted information or misrepresented information in completing the Criminal Record Disclosure, neither the Contractor nor the Supplier shall be liable for damages incurred as a direct or indirect result of such omission or misrepresentation.

4. Upon receipt of the names of the questionnaire for each employee, the Contractor, Subcontractor or Supplier shall conduct a search on the Nebraska State Patrol - Sex-Offender Registry website, <http://www.nsp.state.ne.us/SOR/find.cfm>, to confirm such employee is not listed thereon.
5. In the event that the Project Architect, Contractor, Subcontractor, Supplier or Owner determine that an employee has a record of crimes of a serious nature to immediately reassign and remove any individual or agent from the work site who is not in full compliance with the requirements of this paragraph.

**Springfield Platteview Community Schools  
Certified Worker List**

Firm Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor/Subcontractor/Supplier

Worker Name	Years with Firm	General Job Description
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

# CRIMINAL RECORD DISCLOSURE

PLEASE PRINT

*This disclosure must be updated within 7 days of any NEW charges or convictions.*

Name \_\_\_\_\_  
Last First Middle

Address \_\_\_\_\_  
Street City State Zip Code

Telephone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Area Code

*I understand the purpose of this document is to disclose to my employer any criminal events in my personal history that may preclude me from working on selected jobsites that contractually prohibit workers with a criminal record of a serious nature. I acknowledge the information provided is true and accurate. It is understood and agreed upon that any misrepresentation by me in this document will be sufficient cause for dismissal.*

1. Have you ever been convicted of a felony? ..... ☐ Yes ☐ No

*A conviction will not necessarily disqualify you from your current employment, but it may limit your ability to participate on specific projects. If yes, please attach a separate sheet detailing the nature of offense and terms of sentencing.*

2. Have you been charged or convicted of any of the following crimes: (include date of any incident)

Rape, including statutory rape? ..... ☐ Yes ☐ No

Sexual assault? ..... ☐ Yes ☐ No

Sexual conduct of any kind with a minor? ..... ☐ Yes ☐ No

Abuse of any kind of a minor or child? ..... ☐ Yes ☐ No

Endangerment of a child or debauching a minor? ..... ☐ Yes ☐ No

Public indecency? ..... ☐ Yes ☐ No

Prostitution, pandering, or keeping a place of prostitution? ..... ☐ Yes ☐ No

Assault or battery? ..... ☐ Yes ☐ No

Kidnapping, false imprisonment or abduction? ..... ☐ Yes ☐ No

Child pornography? ..... ☐ Yes ☐ No

Any offense in which a minor was a victim? ..... ☐ Yes ☐ No

*If you answered yes to any of the above, please attach a separate sheet detailing the charge or conviction, including where the charge or conviction occurred, when the events giving rise to the event occurred, and any other information that you would like us to know about the charge or conviction.*

3. Are you now, or have you ever been, listed as a Registered Sex Offender in any State? ..... ☐ Yes ☐ No

4. Are you currently on probation or work release? ..... ☐ Yes ☐ No

*If yes, for what charge and how long a duration? \_\_\_\_\_*

5. On a separate sheet, please identify each city, county, and state in which you have lived for more than three months and the approximate dates in which you lived in each location.

*I hereby attest this information and the information attached to be true and accurate.*

Signature of Employee \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_





Appendix "E"

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/31/2020

11/21/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> LOCKTON COMPANIES 13710 FNB Pkwy, Suite 400 Omaha NE 68154 402-970-6100	<b>CONTACT NAME:</b>	<b>FAX (A/C, No):</b>	
	<b>PHONE (A/C, No, Ext):</b>	<b>E-MAIL ADDRESS:</b>	
<b>INSURED</b> 1380835 BOYD JONES CONSTRUCTION COMPANY P: 402-553-1804 950 S 10th Street OMAHA, NE 68108	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> EMCASCO Insurance Company		21407
	<b>INSURER B:</b> Employers Mutual Casualty Company		21415
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

COVERAGES BOYJO03

CERTIFICATE NUMBER: 16424781

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	N	N	5P44224	3/31/2019	3/31/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	5E44224	3/31/2019	3/31/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	N	N	5J44224	3/31/2019	3/31/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y/N <input checked="" type="checkbox"/> N	N/A	5H44224	3/31/2019	3/31/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Springfield Platteview Community Schools

## CERTIFICATE HOLDER

16424781  
FOR INFORMATIONAL PURPOSES ONLY

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Appendix "F"  
Rental Rate Schedule

EQUIPMENT RATES - ATTACHMENT B  
As of 4/1/2020

Description	Hourly Rate	Daily Rate	Weekly Rate
Office Trailer			146.00
Job Trailer-Storage			72.00
Conex Box Container 20 ft.			52.00
Conex Box Container 40 ft.			82.00
Tow Trailer-Flat or Closed		66.00	203.00
Pickup		113.00	246.00
Skidsteer		267.00	1,000.00
Dump Box		18.00	43.00
Street Sweeper Box		160.00	432.00
Backhoe		444.00	1,574.00
Mini Excavator		285.00	1,198.00
Pavement Breaker		243.00	1,069.00
Utility Tractor		371.00	1,110.00
Crane		1,001.00	3,967.00
Forklift-lull		452.00	1,605.00
Manbasket-lull		122.00	427.00
Roller Compactor		133.00	608.00
Dump Truck		420.00	1,238.00
Jump/Plate Compactor		90.00	320.00
Pressure Washer		81.00	219.00
Air Compressor- tow		146.00	518.00
Air Compressor- portable		39.00	101.00
Welder- gas engine		171.00	598.00
Welder-TIG/Dynasty		108.00	434.00
Welder- Multimatic		85.00	297.00
Plasma Cutter		103.00	400.00
35 kw Generator		294.00	963.00
5000w Generator		50.00	103.00
Material Hoist/Winch		29.00	109.00
Power Station- step down		82.00	317.00
36" fans		34.00	135.00
Trash Chute		50.00	124.00
Demo Saw Concrete		109.00	413.00
Walk Behind Concrete Saw		116.00	337.00
Cutting Torch Set		50.00	152.00
Power Trowel		87.00	247.00
Concrete Vibrators		68.00	270.00
Rotary Hammer		34.00	101.00

Appendix "F"

Rental Rate Schedule

Jackhammer		50.00	149.00
0-149K BTU Heater		63.00	264.00
150K-399K BTU Heater		107.00	414.00
400K-750K BTU Heater		166.00	579.00
Insulated Blankets		5.00	21.00
Trash Pump		29.00	81.00
Water Pump		62.00	247.00
Scaffolding		178.00	648.00
Concrete Jersey Barriers			25.00
Yodock Barriers			33.00
Safety Cone Barriers			4.00
Concrete Bucket		107.00	299.00
Table Saw		39.00	118.00
Laser Level		40.00	132.00
Total Station			1,057.00
Theodolite		59.00	182.00
Computer			39.00
Copier- small			15.00
Copier- large			53.00
Procure			27.00
Radios			20.00
Chipping Hammer		34.00	124.00
Core Drills w/ bits		90.00	361.00
Negative Air Machine		82.00	264.00
Air Monitor		76.00	
Blower		66.00	
Tripod		131.00	
Hydroseeder			382.00
Delivery Truck	11.00		
Delivery Trailer	8.00		
Delivery Dump Truck	74.00		
Safety Cart			266.00

## Appendix G – AIA A133

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

### AFFIDAVIT

The undersigned (“Contractor”) and Springfield Platteview Community Schools (“SPCS”) have entered into a contract for the Contractor to perform construction or delivery services pursuant to the contract in regard to construction of a new, three section elementary school building and construction of additions and renovations to the existing Westmont Elementary School building (the “Project”); and as such, the Contractor being first duly sworn, attests, deposes and states as follows:

A. That (1) each individual performing services for Contractor is properly classified under Neb. Rev. Stat. §§ 48-2901 to 48-2912 (the “Employee Classification Act”), (2) Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) Contractor has complied with Neb. Rev. Stat § 4-114, (4) Contractor has no reasonable basis to believe that any individual performing services for such Contractor is an undocumented worker, and (5) as of the time of this contract, Contractor is not barred from contracting with the state or any political subdivision pursuant to Neb. Rev. Stat. § 48-2912.

B. That Contractor agrees to and at all times shall follow and comply with all provisions of the Employee Classification Act. Contractor acknowledges that a violation of the Employee Classification Act is grounds for rescission of this contract by SPCS. Contractor further acknowledges that providing a false affidavit under Neb. Rev. Stat. § 48-2911 to SPCS may subject Contractor to the penalties of perjury and upon a second or subsequent violation Contractor shall be barred from contracting with the state or any political subdivision for a period of three years after the date of discovery of the falsehood. Contractor shall require any and all subcontractors who perform work under the contract on the Project to provide a similar affidavit, which shall be made available to SPCS upon request.

C. That Contractor further agrees to and at all times shall follow and comply with all provisions of Neb. Rev. Stat. §§ 4-108 to 4-114 and shall use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. That Contractor understands this requirement applies to all Subcontractors of the Contractor. That the Contractor shall, by written agreement, require compliance with the federal immigration verification system by all Subcontractors. That if the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by section 4-108.

D. That under and pursuant to Neb. Rev. Stat. § 48-1122 and other laws, the Contractor agrees that the Contractor and his subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

FURTHER AFFIANT SAYETH NOT.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature Contractor/Authorized Official of  
Contractor

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Appendix "H"



Wage Rates  
As of 4/1/2020

**Boyd Jones Construction Co.**

Trade	Normal Wage Rate/HR	Overtime Wage Rate/HR	Sunday Wage Rate/HR
Skilled Laborer	51.12	71.36	92.66
Carpenter	70.29	96.92	123.54
Concrete Finisher	70.29	96.92	123.54
Milwright	79.88	108.63	140.58
Welder	69.23	93.72	120.35
Foreman	76.68	105.44	136.32
Crane operator	90.53	123.54	159.75
Equipment Operator	73.49	101.18	129.93
Superintendent	108.63	108.63	131.00
General Superintendent	132.06		
Project Engineer	89.46		
Project Manager	150.17		
Senior Project Manager	165.08		
Project Executive	186.38		
Estimator	148.04		
Preconstruction Manager	165.08		
VDC Manager	87.33		
Cost Accountant	108.63		
Contract Administrator	67.10		
Safety Manager	103.31		
Safety Director	132.06		
clerk of the works	59.64	79.88	

(3% Annual Adjustment for Inflation Rounded to the Nearest Dollar for All Rates  
Beginning April 1 Each Year)

# **Additions and Deletions Report for**

## **AIA® Document A133™ – 2009**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:34:21 ET on 12/30/2019.

### **PAGE 1**

**AGREEMENT** made as of the \_\_\_\_\_ day of January in the year 2020.

...

Sarpy County School District 77-0046, a/k/a Springfield Platteview Community Schools  
A political subdivision of the State of Nebraska  
14801 S. 108th Street  
Springfield, NE 68059  
402-592-1300

...

Boyd Jones Construction Company  
A Nebraska corporation  
950 S. 10th Street, Suite 100  
Omaha, NE 68108  
402-553-1804

...

Springfield Platteview Community Schools

Project A – Construction of a new, three section elementary school building and related site utilities and infrastructure work and required furnishing, fixtures and equipment, generally consisting of approximately 70,000 square feet to accommodate 500 students, to be located on the northeast side of the intersection of 9th and Main streets in Springfield, Nebraska ("Project A");

Project B – Construction of additions and renovations to the existing Westmont Elementary School building located at 13210 Glenn Street, Omaha, Nebraska, with final scope of such additions and renovations to be determined at a later date ("Project B").

Collectively Project A and Project B shall be the "Project" or "Projects".

...

Alley Poyner Macchietto Architecture, Incorporated  
A Nebraska corporation  
1516 Cuming Street  
Omaha, NE 68102  
402-341-1544

### **PAGE 2**

Brett Richards, Superintendent of Schools

Springfield Platteview Community Schools  
14801 S. 108th Street  
Springfield, NE 68059  
402-592-1300  
brichards@springfieldplatteview.org

...

Tim Meyer  
Senior Vice President of Operations / Project Executive  
Boyd Jones Construction Company  
950 S. 10th Street, Suite 100  
402-550-1795  
tmeyer@boydjones.biz

...

Jay M. Palu, Partner  
Alley Poyner Macchietto Architecture, Incorporated  
1516 Cuming Street  
Omaha, NE 68102  
402-341-1544  
JPalu@alleypoyner.com  
**PAGE 3**

## **12 SCOPE OF THE AGREEMENT**

### **EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

...

**1.2.1 Term of Agreement:** The term of this Agreement between the Owner and the CM@R shall be for a period commencing with the issuance of the Notice to Proceed with the Project, and shall continue through the occurrence of one of the following events, whichever occurs first in time:

- .1 The completion of all services provided by the Construction Manager for the Projects under the terms of this Agreement, with the term of this Agreement to extend twelve (12) months after the issuance by the Architect of the last in time Certificate of Substantial Completion for the Projects.
- .2 The termination of this Agreement according to its terms; INCLUDING termination pursuant to Section 4.1.5 and Article 10 in the event the legal voters of the Owner do not approve the bond issue to finance the project.

**§ 1.2.2** This Agreement shall not create a continuing contract for construction management services for future building projects or bond elections beyond the terms of this Agreement.

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended and attached hereto, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, A201-2007 as amended and attached hereto, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 as amended and attached hereto shall mean the Construction Manager. In the event that there are conflicting provisions between this Agreement and the General Conditions, the provisions of this Agreement shall control.

## **§ 1.4 Definitions**

### **§ 1.4.1 The Project**



"The Project" or "Projects" shall mean the Springfield Platteview Community Schools new construction and additions and renovations projects, located in Springfield and Omaha, Nebraska, more particularly described on page 1 of this Agreement. Each Project shall have a separate Project Budget, plans and specifications, schedule, and Guaranteed Maximum Price (GMP).

#### **§ 1.4.2 Project and Construction Budgets**

The Owner's Construction Budgets for the Work on the Projects performed under this Agreement, plus the Construction Manager's compensation under Articles 4 and 5 of the Agreement and all Expenses to be Reimbursed, as defined in Article 6 of this Agreement, is as follows: The Construction Budget for Project A is approximately FIFTEEN MILLION DOLLARS (\$15,000,000); the Construction Budget for Project B is approximately THREE MILLION DOLLARS (\$3,000,000) (hereinafter "Project Budget"). The Owner's Project Budget, representing total budget for the entire Project including the Cost of the Work, and Construction Manager's compensation and reimbursable expenses is EIGHTEEN MILLION DOLLARS (\$18,000,000).

#### **§ 1.4.3 The Work**

"The Work" shall mean the Subcontracts and Self-Performed Work by the Construction Manager, if any, for the construction of the Project. The Construction Manager is responsible for the construction, administration and/or supervision of the Work under the Construction Documents.

#### **§ 1.4.4 Cost of the Work**

"Cost of the Work" shall mean the total cost of all Subcontracts, including Construction Manager's Self-Performed Work, for the construction of the Projects and site improvements described in the Contract Documents, all general conditions costs, aid-to-construction costs, and other Expenses to be Reimbursed, as defined in Article 6 to this Agreement. "Cost of the Work" shall not include the Construction Manager's Compensation under Articles 4 and 5 of this Agreement, unused Construction Contingency, unused Owner's Contingency, the cost of any insurance and surety contracts purchased or controlled by the Owner, or any other contracts or agreements that are not part of or described by the Construction Documents, or Architect/Engineering or other professional fees and expenses.

#### **§ 1.4.5 Costs to be Reimbursed**

"Costs to be Reimbursed" shall mean those expenses incurred by the Construction Manager that are to be reimbursed pursuant to the provisions of Article 6.

#### **§ 1.4.6 Construction Contingency**

"Construction Contingency" as referred to and identified in the Construction Budget, cost estimates for the Project, including any form of guaranteed maximum price, shall mean a dollar amount not designated for any division of the Work which is available to be applied to the Construction Budget for a specified division or divisions of the Work; provided that all funds identified as contingency funds are available for the project on an as needed basis and shall at all times be the sole property of the Owner. The Guaranteed Maximum Price will contain a separately-identified Construction Contingency amount. The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such causes or details are limited to refinement of details of design within the scope of standards, quality and quantities which were reasonably inferable from the Construction Documents at the time of the Owner's approval of the GMP. The Construction Manager, with Owner's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Depletion of the Construction Contingency shall not justify an increase to the Guaranteed Maximum Price. All savings in the Construction Contingency will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

#### **§ 1.4.7 Guaranteed Maximum Price**

"Guaranteed Maximum Price" or "GMP" shall mean the total of the sum of the Cost of the Work for the Project plus the Construction Manager's Compensation under Articles 4 and 5 hereof, the Construction Contingency, if any, which amount is guaranteed by the Construction Manager not to exceed the amount provided in provided in the approved Guaranteed Maximum Price Amendment, Exhibit B, subject to additions and deductions by changes in the Work as

provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. **There shall be separate GMPs for each Project.** IF THE GUARANTEED MAXIMUM PRICE IS EXCEEDED FOR THE PROJECT, AS THE CASE MAY BE, THE CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR PAYMENT FROM ITS OWN RESOURCES WITH NO CONTRIBUTION FROM THE OWNER OF THE DIFFERENCE BETWEEN THE FINAL PRICE AS DEFINED AT PARAGRAPH 1.4.8 BELOW AND THE GUARANTEED MAXIMUM PRICE AS ADJUSTED BY CHANGE ORDERS, IF ANY.

#### **§ 1.4.8 Final Price**

"Final Price" shall mean the sum of the final Cost of the Work, Expenses to be Reimbursed, and the Construction Manager's Compensation. The Final Price shall be determined by the Owner based upon disbursements made by the Owner for the Project to construct the Work under the Contract Documents. The Owner shall notify the Construction Manager of the Final Price not less than thirty (30) days following the issuance of the last in time Certificate of Substantial Completion by the Architect for the Work. The Construction Manager shall have the right to inspect the records of the Owner and conduct an audit to confirm the Owner's calculation of the Final Price; provided, that the Construction Manager must request such audit within thirty (30) days of the receipt from the Owner of the Final Price calculation or the right to such audit shall be waived and the Final Price calculated by the Owner shall be final and binding on all parties.

#### **§ 1.4.9 Project Team**

"Project Team" shall mean the Owner's Designated Representative, or designee(s), Board Facilities Committee and other parties assigned by the Owner, the Construction Manager's Designated Representative, or designee(s), the Architect's Designated Representative, or designee(s), and the Fiscal Agent.

#### **§ 1.5 Financing**

Financing for the Project shall be through the issuance of bonds to be approved by the legal voters of the Owner at the special election anticipated to be held in May 2020 ("Bond Election").

#### **PAGE 5**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. 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. Unless the Construction Manager specifically provides design services, any recommendations and/or advice provided by the Construction Manager concerning potential value engineering options or design alternatives shall be in the capacity of a Construction Manager and not as a licensed design professional.

#### **PAGE 6**

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

...

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. The Construction Manager shall consult with and advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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. Unless the Construction Manager specifically provides design services, any recommendations and/or advice provided by the Construction Manager concerning potential value engineering options or design alternatives shall be in the capacity of a Construction Manager and not as a licensed design professional.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the monthly update a Project schedule, not less than monthly,

for the Owner and 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 could 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 well in advance of construction; and the occupancy requirements of the Owner.

...

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

§ 2.1.5.2 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, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's ~~and Owner's~~ review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved ~~Project budget~~ Construction Budget for the Project and make recommendations for corrective action.

...

The Construction Manager shall ~~develop bidders' interest in the Project~~. use due diligence to develop bidders' interest in the Project, which may include Construction Manager's Self-Performed Work with an emphasis on developing and encouraging local contractor interest.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's ~~and Owner's~~ review and the Owner's acceptance, a procurement schedule for items that must be ordered ~~or procured~~ well in advance of construction. The Construction Manager shall expedite and coordinate the ~~ordering-ordering~~, procurement and delivery of materials that must be ordered well 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. Prior to the establishment of the Guaranteed Maximum Price (GMP) the Construction Manager may, with the Owner's written approval, procure Subcontracts for certain scopes of the work that if procured early are deemed by both Construction Manager and Owner as beneficial to the Project. Subcontracts must be procured in accordance with the Contract Documents. Any subcontracts that may be procured before Construction Phase Services commences shall be contingent on that commencement and establish limits to the cost exposure to the Project. Such limits shall be proposed by Construction Manager and approved by Owner in writing prior to issuance of any early procurement Subcontracts by Construction Manager.

## PAGE 7

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall inquire on any perceived variances they are aware of. The Construction Manager shall ensure that all Self-Performed Work and Work performed by its Subcontractors is performed in accordance with the Contract Documents. 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.

...

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~~ quasi-governmental authorities for inclusion in the Contract Documents.

...

~~§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.~~

§ 2.2.1 When the Construction Documents for the Project are approximately seventy percent (70%) completed, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance or comments for modification. There shall be separate Guaranteed Maximum Price proposals for each Project. The seventy percent (70%) completed Construction Documents for each Project are anticipated to be completed as follows: For Project A by Fall 2020 and for Project B by Fall 2020. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. The Construction Manager's Guaranteed Maximum Price proposal shall be broken down based upon the 16 Division spreadsheet form shown on Appendix "A".

§ 2.2.1.1 The Architect shall deliver to the Construction Manager the Drawings and Specifications per the Project Schedule established by the Architect, Owner and Construction Manager. These documents will be approximately 70% complete Construction Documents (the "Basis Documents"). At the same time, the Architect will also deliver to the Construction Manager the Architect's detailed listing of any material incomplete design elements and the Architect's statement of intended scope with respect to such incomplete elements and divisions of the work (the "Design Intent Statement").

§ 2.2.1.2 The Construction Manager's Guaranteed Maximum Price proposal shall be based upon the standard construction industry sixteen (16) divisions of the Work, or other current CSI designations, setting forth the estimated cost organized by materials and systems, trade categories, allowances, contingency, and other items, along with qualifications and assumptions based upon the Basis Documents and the Design Intent Statement and all information required under paragraph 2.2.3 below.

§ 2.2.1.3 The Construction Manager, Owner, Project Architect, and selected consultants (Project Team) shall meet to identify the extent that Drawings and Specifications are anticipated to require further development by the Architect pursuant to subparagraph 2.2.2, contingencies pursuant to subparagraph 2.2.4, and reconcile any questions, discrepancies or disagreements relating to the qualifications and assumptions, the Basis Documents or the Design Intent Statement pursuant to subparagraph 2.2.5. The reconciliation shall be documented by an addendum to the GMP qualifications and assumptions that shall be approved in writing by the Project Team.

§ 2.2.1.4 The final negotiated GMP shall not exceed the Construction Budget established for construction. If the GMP exceeds the Construction Budget, the Owner reserves the right to terminate the agreement with the Construction Manager.

§ 2.2.1.5 New Federal Tariffs. The GMP may contain a "Tariff Material Cost Escalation Allowance" amount for the Project. Said allowance only may be used by the Construction Manager for post-GMP cost increases in materials and/or equipment for the Project caused solely by the imposition of new tariffs imposed by the United States or other countries after approval of the GMP. The Construction Manager shall only access and use the allowance to pay for the increased cost amounts for materials and/or equipment for the Project impacted by new tariffs; PROVIDED that the Construction Manager shall submit adequate evidence showing the materials and/or equipment impacted by new tariffs and shall verify that any costs increases were caused by tariffs. For the avoidance of doubt, this allowance shall



not apply to the base costs of materials and/or equipment to be used on the Project, only for the cost difference between the actual costs with new tariffs and the base costs without new tariffs.

PAGE 8

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the ~~Contract~~; Contract upon which the GMP is based;
- ...
- .3 A statement of the proposed Guaranteed Maximum Price, including a detailed statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, construction industry divisions of work or current CSI designations, with any estimates of allowances, general conditions/aid-to-construction, Construction Contingency, and the Construction Manager's Fee;
- .4 The anticipated ~~date~~ dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner ~~must accept the Guaranteed Maximum Price~~ and Construction Manager must mutually accept the Guaranteed Maximum Price or return the Construction Manager's proposal for modification or further refinement. The date must not be less than four (4) calendar weeks.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its ~~contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.~~ Construction Contingency

**§ 2.2.4.2** The Construction Manager shall provide the Owner and Architect with a report on the status of the Construction Contingency on a monthly basis throughout the duration of the Project after the Guaranteed Maximum Price has been established. In each such monthly report on the status of the Construction Contingency, the Construction Manager shall identify (i) any amounts added to the Construction Contingency which are a result of positive variances or savings in the components of the Cost of the Work, (ii) any amount allocable up to the date of the report which are a result of negative variances in components of the Cost of the Work, and (iii) any amounts reserved from the Construction Contingency for anticipated negative variances in components of the Cost of the Work which have been identified but not fully evaluated. After being adjusted for items (i) through (iii) above, the remaining amount of the Construction Contingency shall be designated as the unallocated portion of the Construction Contingency. All charges to the Construction Contingency by Construction Manager shall be subject to providing the background information required in the Change Order process.

**§ 2.2.4.3** The Construction Manager may, at its discretion, make portions of the Construction Contingency available for the Owner's use at their discretion. This is to allow the Owner's use of the funds when they are in excess of the expected potential risk at the stage of the Project.

**§ 2.2.4.4** If, at the time Owner makes the final payment to the Construction Manager, there is a balance in the Construction Contingency, it shall inure to the benefit of the Owner.

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**§ 2.2.6** 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~~ Amendment, identified as Exhibit A, 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.

**2.2.6.1** In the event that the Owner and Construction Manager are not able to reach agreement upon a Guaranteed Maximum Price by the date specified in the Guaranteed Maximum Price proposal, Owner may terminate this Agreement in accordance with the provisions herein or, at Owner's sole discretion to do so, work with the Construction Manager to make value engineering and/or schedule changes in order to achieve a mutually agreed upon Guaranteed Maximum Price.

...

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

...

#### **§ 2.3.1.3 On-Site Staffing**

The Construction Manager shall maintain exclusively for the Project a competent, duly licensed and certified full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the Construction Manager's on-site management and supervisory personnel shall be consistent with the Construction Manager's interview presentation and shall not be removed or replaced without the Owner's consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the Construction Manager shall promptly replace such personnel without consideration of any additional compensation for the replacement. Such on-site staffing shall include the following personnel who shall perform the following duties:

##### **§ 2.3.1.3.1 Project Manager**

Construction Manager's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion and Final Completion have been completed or corrected in accordance with the Construction Documents.

##### **§ 2.3.1.3.2 On-Site Superintendent(s)**

The Construction Manager shall have a site superintendent on the site of the Work at all times the Work is being performed. The Construction Manager's site superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the site superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The Construction Manager's site superintendent's services shall include: (1) review of all stages of construction to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents; (2) responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the Subcontractor are in compliance with the Contract Documents and all local, state and federal regulations; (3) continuous on-site inspections to check quality or quantity of the Work; and, (4) keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**§ 2.3.2.1** ~~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 by 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 and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~ **Actual Performance of the Work**

All of the Work on the Project, except such work identified and approved by the Owner's as an Aid-to-Construction Cost to be Reimbursed under Article 6 or work performed by the Construction Manager as Self-Performed Work, shall be performed under contracts between the Construction Manager and separate subcontractors ("Subcontracts"). Such Subcontracts shall be covered by the Construction Manager's payment and performance bonds. Upon reaching an agreement outlined in section 2.1.7 or the Drawings and Specifications are at the appropriate level for any given bid or proposal package as determined by the Construction Manager and approved by the Owner the Construction Manager

shall advertise for competitive bids or proposals for each Subcontract and award such Subcontracts as set forth below. As part of the process of obtaining competitive bids for the Work, the Construction Manager shall perform the following responsibilities.

**§ 2.3.2.2** If the Guaranteed Maximum Price has been established and when a specific bidder (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 Contract Time and 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner. **Construction Manager Development of Bid Packages**

The Construction Manager, in consultation with the Owner and Architect and with the approval of the Owner, shall develop bid packages and solicit Subcontractor and Supplier interest in the Project with emphasis on the development of bid packages that will encourage participation by local contractors, which may include Construction Manager's Self-Performed Work.

**§ 2.3.2.3** 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 prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, 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 Section 6.11 below. **Advertisement for Competitive Bids**

The Construction Manager shall advertise for competitive bids for all portions of the Work pursuant to the bid process that shall include (a) preparing invitations for bids and proposals and proposed contract documents; (b) publishing public notice which includes the general nature of the proposed work, fixes the hour, date, time and place where such bids and proposals shall close, or be received or opened, and provides the name and telephone number of a person to be contacted by anyone interested in submitting a bid and proposal to contract for such work in a newspaper of general circulation in the area at least fourteen (14) days prior to bid and proposal opening and providing other public notice; (c) establishing evaluation criteria, interview and selection procedures which may include consultations with one or more bidders according to the requirements of any federal, state, and local laws applicable, with the board giving approval to and making the award of any final contracts; and (d) preparing, signing, executing and delivering all documents, and taking or causing to be taken all other necessary or appropriate action to complete the bidding and proposal process for each contract; and that the above shall and is hereby determined to be the regular manner established by the Owner for advertising for bids and proposals for all contracts for the Project. No bid packages may be advertised for bid until the Owner has approved the scope and content of such bid package.

**§ 2.3.2.3.1** In implementing the forgoing bid process, the Construction Manager shall be generally responsible to including, but not limited to:

**§ 2.3.2.3.1.1 Schedule for Letting Bids**

Establish a schedule for letting bids for each portion of the Work pursuant to the schedule for the construction of the Work established for the Project;

**§ 2.3.2.3.1.2 Dates for Advertisement of Bids**

Establish dates for advertising for and opening of bids;

**§ 2.3.2.3.1.3 Location of Bid Opening and Reading and Availability of Bids**

All bids will be opened at the Construction Manager's designated administrative offices. All submitted bids shall be available for public inspection thereafter after review for completeness during the normal business hours for the Owner's administrative offices; and the Construction Manager shall provide to each submitting bidder a summary of the bids within five (5) business days of the opening of the bids upon written request;

**§ 2.3.2.3.1.4 Publication of Bids**

Arrange for publication of advertisement for bids, which publication shall fix the day and hour upon which the bids shall be returned or received, and the date, hour and location the bids will be opened, and that the bids shall be opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close;

#### **§ 2.3.2.3.1.5 Provision of Construction Documents**

Make available to all prospective bidders the Plans and Specifications for the portion of the Work being let for bids upon payment by such prospective bidders for the cost of the Plans and Specifications;

#### **§ 2.3.2.3.1.6 Pre-Bid Conferences**

Be in attendance at and conduct pre-bid conferences with firms interested in submitting bids as Subcontractors following the schedule for the Project;

#### **§ 2.3.2.3.1.7 Specify Required Information from Bidders**

Confirm with all prospective Subcontract bidders that they will provide all information requested of bidders on the Work required by the Owner in the bid documents;

#### **§ 2.3.2.3.1.8 Presence at Bid Openings**

Be present at all bid openings;

#### **§ 2.3.2.3.1.9 Minimum Number of Bids and Evaluation of Bids**

For a bid package to proceed to award there must be not less than three (3) bona fide bids submitted, unless such requirement is waived for good cause by the Owner. "Good cause" shall be determined on a case-by-case basis in consideration of the receipt of competitive nature of the bids received and the progress of the Work. In consultation with the Owner and Architect, evaluate each bid and bidder, and make recommendations to the Owner regarding which bids will be accepted as the lowest responsible bid for portions of the Work being bid; and,

#### **§ 2.3.2.3.1.10 Low Responsible Bidder**

For purposes of the Work of this Agreement, the term "lowest responsible bidder" shall mean financial responsibility, the general ability and capacity of the bidder to perform the Work, the bidder's facilities and suitability for the task, and those qualities which the bidder must necessarily have in order to be able to perform the contract strictly in accordance with its terms.

#### **§ 2.3.2.3.1.11 Construction Manager Assistance in Determining Low Bid**

For purposes of the Work of this Agreement, upon identifying the responsible bidders for a portion of the Work, the Construction Manager shall advise on which of the responsible bidders has submitted the lowest bid. The lowest total price is not always dispositive of this question because public bodies retain an official discretion to determine which bid offers the best value to their constituents. The Owner shall have discretion to award the contract to one other than the lowest of the responsible bidders whenever a submitted bid contains a relevant advantage.

**§ 2.3.2.3.1.11.1** The Construction Manager shall provide to each submitting bidder notice of the bid determined to be the low responsible bidder within ten (10) business days of the determination by the Owner upon written request.

#### **§ 2.3.2.3.2 Bidding by Construction Manager or Related Party**

Should the Construction Manager or a related party in any way affiliated with the Construction Manager (as that term is defined in § 6.10 below) desire submit a bid for a portion of the Work being let for bids, the same procedures and processes as required of all bidders shall be followed, **PROVIDED that any bid by the Construction Manager or related party must be submitted no less than Twenty-Four (24) hours before all other bids are due to be submitted (unless granted permission otherwise by the Owner)**, and the bid of the Construction Manager or related party may only be accepted if such bid is the lowest responsible dollar amount bid. Any bid by Construction Manager that is accepted by Owner shall be deemed and treated as Self-Performed Work (as described in Section 6.3 below).

#### **§ 2.3.2.3.3 Non-Acceptance by Owner of Low Bid Determined By Construction Manager**

If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are received through the competitive bidding process (1) is determined by the Construction Manager to be the lowest responsible bid; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which 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 in the Work be issued to adjust the schedule of the Work and the Guaranteed Maximum Price by the difference between the bid of the person or entity determined by the Construction Manager to be the low bid and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.



#### **§ 2.3.2.3.4 Conformance by Material Suppliers**

Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the bidding provisions herein and the payment provisions of subparagraph 6.2.

#### **§ 2.3.2.3.5 Rebidding of Work**

In cooperation with the Architect and Owner, the Construction Manager shall assist with the rebidding of any portion of the Work for which no satisfactory bid has been received.

#### **§ 2.3.2.3.6 Bid Bonds**

The Construction Manager may require bidders to submit bid bonds or other bid security and, as applicable, evidence of the ability to obtain payment and performance bonds and certificates of insurance acceptable to the Construction Manager and Owner as a prerequisite to bidding on portions of the Work to be performed by Subcontract.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2. 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, 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 Section 6.11 below.

§ 2.3.2.5 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 to the Owner and Architect. Unless otherwise agreed by the Owner, Subcontracts shall be between the Construction Manager and the selected Subcontractor. Subcontracts shall contain or incorporate in its entirety the AIA Document A201–2007, General Conditions of the Contract for Construction, as amended.

§ 2.3.2.6 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 submittal schedule in accordance with Section 3.10 of A201–2007. If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.7 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. The Construction Manager shall also 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. 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 to the Owner, the Owner's Designated Representative, and Architect.

§ 2.3.2.8 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 2.3.2.7 above. 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 submittal schedule in accordance with Section 3.10 of A201–2007. The Owner acknowledges that the Construction Manager's schedule (including all critical path activities and all activities with float) is a working tool that the Construction Manager shall manage as its discretion dictates. The schedule adopted with the acceptance of GMP Amendment is not a Contract Document; however, it does not alter the Construction Manager's obligation to substantially complete the Work by the specified date of Substantial and Final Completion. The Construction Manager may revise the schedule throughout the Project as it deems necessary, and as agreed to by Owner, so long as it does not defer the specified date of Substantial and Final Completion. As part of its responsibility for the means and methods of construction, the Construction

Manager shall have exclusive authority to determine the sequencing and duration of all direct construction schedule activities. As such, the Construction Manager shall have the exclusive use of any float in the schedule, given that float is clearly defined and all critical path activities and durations are agreed upon by the owner. The Construction Manager shall ensure a schedule is available to all Subcontractors and track progress on a daily basis.

§ 2.3.2.9 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. The Construction Manager shall also 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.

§ 2.3.2.10 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 2.3.2.8 above.

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§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, Construction Budget, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's Owner Contingency, if any, and 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.

§ 3.1.4 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-relevant, as determined by the Owner, 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. The Construction Manager shall notify the Owner and Architect promptly of any actual or perceived inconsistent, incorrect, or inaccurate information discovered by them or their Subcontractors.

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#### § 3.2.1 Legal Requirements-Requirements

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

...

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. an agreement between the Owner and an architect and/or engineering or design firm.

#### ARTICLE 4 – COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRE-BOND ISSUE ELECTION SERVICES (INCLUDING PRECONSTRUCTION PHASE SERVICES)

§ 4.1.1 For the Construction Manager's Preconstruction Phase services-services prior to the bond issue election, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

The Construction Manager's Fee for pre-bond issue election services, including services as may be required under Sections 2.1 and 2.2, any services by consultants of the Construction Manager and any reimbursable expenses of the Construction Manager, up to the date of the bond issue election shall be as follows, subject to the total compensation limitation provided in this Section:

§ 4.1.2.1 The Construction Manager's Fee for Direct Personnel Expenses of the Construction Manager's personnel and any consultants of the Construction Manager shall be on an hourly basis for the actual hours worked by Construction Manager personnel and/or consultants at the applicable hourly rates set forth on the Efforts Schedule, Appendix "B."

§ 4.1.2.2 The Construction Manager's compensation for reimbursable expenses, if any shall be based on the actual cost of the expense incurred by the Construction Manager, without any markup.

§ 4.1.3 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. **Direct Personnel Expense** "Direct Personnel Expense" shall mean the direct salaries of all of the Construction Manager's personnel engaged in the Project, and the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, pensions and similar contributions and benefits, and all costs for transportation and subsistence (meals and lodging) relating to the Project.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. **Efforts Schedule**

The agreed-upon Efforts Schedule for all services of the Construction Manager for the Project is attached as Appendix "B." The Efforts Schedule includes and identifies the positions and specific personnel of the Construction Manager and any outside consultants of the Construction Manager to be assigned to the Project, excluding personnel at the Construction Manager's principal office or offices other than the site office, and setting forth the anticipated maximum number of hours per month that the Construction Manager's project specific personnel assigned to the Project (e.g. the Project Executive, Project Manager and Site Superintendent) will be providing services during the Pre-Bond Issue Election Services and the Post-Bond Issue Election Services, including Preconstruction and Construction Phases) of the Project. The Efforts Schedule specifically provide for personnel hours dedicated to the Project Completion and Warranty Work services to be provided by the Construction Manager. The Efforts Schedule shall also provide for the hourly rates to be charged to the Owner for the Direct Personnel Expense for each of the personnel identified and assigned to the Project by the Construction Manager. The hourly rates on the Efforts Schedule shall be in effect without modification for the entire duration of the Project.

§ 4.1.5 IN THE EVENT THE LEGAL VOTERS OF THE OWNER DO NOT APPROVE A BOND ISSUE TO FINANCE THE PROJECT, THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE, AND IN SUCH EVENT THE CONSTRUCTION MANAGER SHALL RECEIVE AS FINAL PAYMENT THE SUMS DUE UNDER § 4.1.2 PLUS ANY EXPENSES TO BE REIMBURSED AS PROVIDED FOR HEREIN. THE CONSTRUCTION MANAGER SHALL NOT BE ENTITLED TO ANY OTHER FEES OR COMPENSATION.

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§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. The progress payment for the Construction Manager's Fee shall be in amounts equal to actual hours worked by Construction Manager personnel and/or consultants during the period covered by the Application for Payment times the hourly rates specified for such personnel, not to exceed the hours and hourly rates shown on the final Efforts Schedule, Appendix "B."

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

~~—%~~ Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after review and action on the Application for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554. Notwithstanding the requirements of this section, to allow sufficient time for review and action on Applications for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554, the "receipt by the owner or the owner's representative of a payment request made pursuant to the contract" under Neb. Rev. Stat. § 45-1203 shall be deemed to occur at the regular meeting of the Owner's Board of Education immediately following the receipt of the Application for Payment by the Architect.

#### **ARTICLE 5 ~~COMPENSATION FOR CONSTRUCTION PHASE SERVICES~~**

**§ 4.2.3** Amounts unpaid within the time specified in Section 4.2.2 shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

Twelve % per annum

**§ 4.2.4** The Application for Payment shall include personnel time sheets, if requested by the Owner, and invoices of Costs to be Reimbursed

#### **ARTICLE 5 ~~COMPENSATION FOR POST-BOND ISSUE ELECTION SERVICES (INCLUDING PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES)~~**

**§ 5.1** Contingent upon successful passage of bond issue election to finance the Project, the Construction Manager's post-bond election issue services compensation shall be as follows. For the Construction Manager's services performed after the successful passage of the bond issue election by the legal voters of the Owner, including performance of the Work as described in Section 2.3, Sections 2.1 through 2.5, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee. Fee described in Section 5.1.1.

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##### **§ 5.1.1.1 Direct Personnel Expense**

The Construction Manager's Fee for Direct Personnel Expenses of the Construction Manager's personnel and any consultants of the Construction Manager shall be on an hourly basis for the actual hours worked by Construction Manager personnel and/or consultants at the applicable hourly rates set forth on the Efforts Schedule, Appendix "B." The Construction Manager's Fee for Direct Personnel Expenses on the Project, including all pre-bond issue election services and post-bond issue election services, shall not shall not exceed the following amounts: For Project A, the amount of EIGHT HUNDRED THIRTY-EIGHT THOUSAND, THREE HUNDRED SEVENTEEN AND 68/100THS DOLLARS (\$838,317.68); for Project B, the amount of FOUR HUNDRED THIRTY-FIVE THOUSAND, EIGHT HUNDRED NINETEEN AND 90/100THS DOLLARS (\$435,819.90).

##### **§ 5.1.1.2 Fee for Corporate Overhead, Profit and Risk**

The Construction Manager's fixed fee to cover the Construction Manager's corporate overhead, profit and risk for the entire Project shall be the amount of TWO PERCENT (2.0%) of the total Cost of the Work for the entire Project as defined herein; PROVIDED that should the Cost of the Work exceed the Guaranteed Maximum Price, the Construction Manager's fee shall be calculated based upon the amount of the Cost of the Work set forth in the Guaranteed Maximum Price. The above Construction Manager's Fee for corporate overhead, profit and risk shall be converted to a lump sum to be included in the Guaranteed Maximum Price.

...

Adjustments on account of changes in the Scope of the Work subsequent to the execution of the Agreement may be the basis for an adjustment of the Construction Manager's Efforts Schedule and attendant MPE; such adjustment shall be determined based upon the revised Schedules and Scope of the Work, and added to the Agreement by addendum.



§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: See AIA Document A201-2007, as amended.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed \_\_\_\_\_ percent (\_\_\_\_%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall be at or below the amounts as are set forth on the rental rate schedule attached as Attachment F, which rates shall be in effect for the entire duration of the Project. Such rental rates, and all other equipment agreed to be necessary for the Work, shall be included into the accepted Guaranteed Maximum Price Amendment.

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, Exhibit A, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

100% of savings for the Cost of the Work and Contingency shall inure to the benefit of the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion and the Date of Final Completion shall be subject to adjustment as provided in the Contract Documents.

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§ 5.3.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment as demonstrated to the Owner by the Construction Manager using the critical path method of scheduling in the Contract Time as a result of changes in ~~the Work~~ the Work as demonstrated to the Owner by the Construction Manager using the critical path method of scheduling.

§ 5.3.2 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 ~~Section~~ Sections 7.2.2 and 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for ~~Construction~~ Construction, or may be determined through mutual agreement of the Owner and Construction Manager or as may be determined by mutual agreement of the Owner and the Construction Manager.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in ~~Section~~ Sections 7.2.2 and 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

...

§ 5.3.5 If no specific provision is made in Section 5.1.2 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 5.1.2 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.

...

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Cost of the Work shall include the total cost of all Subcontracts and Construction Manager's Self-Performed Work (as defined in Section 6.3 below) for the construction of the Project and site improvements described in the Contract Documents, and other expenses to be reimbursed, as defined in this Article 6. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. The Cost of the Work does not include the Construction Manager's Fee under either Article 4 or 5, unused and unallocated Construction Contingency, or unused and unallocated Owner's Contingency.

...

## **§ 6.2 Labor Costs~~[omit]~~**

**§ 6.2.1** Wages 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.

**§ 6.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

**§ 6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 6.2.1 through 6.2.3.

**§ 6.2.5** 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, with the Owner's prior approval.

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Subcontracts and the Construction Manager's Self-Performed Work. Subcontracts, bid packages, or any other work that the Owner approves to be performed by or awarded to the Construction Manager, regardless of whether or not Construction Manager utilizes its own forces, shall be on a lump sum basis (the "Self-Performed Work"). The Construction Manager's Self-Performed Work shall not include any work by the Construction Manager's management or office personnel under this Agreement, or any of the work, materials or equipment under Sections 6.4, 6.5, 6.6, or 6.7 of this Agreement.

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## **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items    (General Conditions / Aid-to-Construction)**

**§ 6.5.1** ~~Costs of transportation, storage, installation, maintenance, dismantling 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.~~ The Construction Manager, or a Subcontractor upon written authorization of the Construction Manager, may upon approval of the Owner be reimbursed for costs of labor and material for work that is incidental to the construction

of the Work of the Project but necessary to maintain the quality, budget and/or schedule of the Work ("Aid-to-Construction"); such reimbursement to be made on a cost basis without markup. Such Aid-to-Construction work need not be bid as long as it is determined to be incidental to the original bid work of a subcontractor by the Owner. The Aid-to-Construction shall be a cost-not-to-exceed line item in the Reimbursable Expense section of the Guaranteed Maximum Price provided by the Construction Manager. Labor rates for Construction Manager personnel providing Aid-to-Construction shall be as indicated in the attached Appendix "H".

~~§ 6.5.2 Rental charges for temporary facilities, Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, seasonal protection, temporary water and utilities, safety measures, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval, 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.~~

~~§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal. 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rental rates and rental periods of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. Rental rates and rental periods shall be specified in a manner that maximizes economies of scale. For the avoidance of doubt, rental periods on a weekly basis or other short-term periods should be avoided; rental periods for longer periods of time are preferred. Rental rates shall be set forth on the rental rate schedule attached as Appendix "F," which rates shall be in effect for the entire duration of the Project.~~

~~§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, cleaning and removal of debris from the site of the Work and its proper and legal disposal, to include all requirements of material separation, recycling, reuse, and disposal to achieve the project goals.~~

~~§ 6.5.5 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. Costs of document reproduction, phone service at the job site not otherwise provided by Construction Manager, and parcel delivery charges.~~

~~§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. [omit]~~

~~§ 6.5.7 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. Photo documentation, Owner inspection and insurance coverage shall be required prior to payment by the Owner.~~

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~~§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, liable, PROVIDED, that the Owner is an exempt entity under the tax laws of the State of Nebraska and is not subject to sales, use or similar taxes.~~

~~§ 6.6.2.1 The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, PROVIDED that the Contractor fulfills the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Construction Manager may be required to segregate materials and labor costs at the time a Contract for the Work is awarded. Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. Construction Manager shall obtain Resale Certificates from Contractor's suppliers. Failure of Contractor or any Sub-Contractor to obtain Resale Certificates from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Construction Manager shall pay all necessary~~

local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. THE CONSTRUCTION MANAGER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

**§ 6.6.3 Fees** Unless agreed to be paid by the Owner, 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 or any governmental or quasi-governmental authority to pay.

...

**§ 6.6.8** 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.

**§ 6.6.9** Subject to the Owner's prior approval, 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.

...

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 and including the General Conditions costs shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 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 6.8.

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- .1** Salaries and other compensation of the Construction Manager's personnel-personnel, regardless of location, whether stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;office;

...

- .7** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and  
**.8** Costs for services incurred during the Preconstruction Phase.Phase;  
**.9** [omit]  
**.10** The unused and unallocated portions of the Construction Contingency.

...

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, daily diaries, superintendent reports, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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. Amounts paid for Construction Manager's Self-Performed Work are not subject to audit for actual cost.



## **ARTICLE 7 – PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **ARTICLE 7 PAYMENTS FOR POST-BOND ISSUE ELECTION SERVICES (INCLUDING CONSTRUCTION PHASE SERVICES)**

**§ 7.1.1** Based upon Applications for Payment submitted to the Owner, Owner's Designated Representative, and 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.

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

#### **Payment of Construction Manager's Compensation**

##### **§ 7.1.2.1 Payment of Construction Manager's Compensation for Preconstruction and Construction Phase Personnel Services**

Based upon Applications for Payment submitted to the Architect by the Construction Manager, the Owner shall make progress payments to the Construction Manager as compensation for post-bond issue election Preconstruction and Construction Phase Personnel services for Direct Personnel Expense for actual hours worked by Construction Manager personnel for supervision of the Work as provided below and elsewhere in the Contract Documents.

**§ 7.1.2.1.1** The period covered by each Application for Payment submitted by the Construction Manager for Preconstruction and Construction Phase Personnel services shall be one (1) calendar month ending on the last day of the month.

**§ 7.1.2.1.2** The portion of the Construction Manager's Compensation for Preconstruction and Construction Phase Personnel services to be paid with each Application for Payment shall be determined by the actual hours worked by the Construction Manager's personnel for the Project as confirmed by the Project Architect and Owner.

##### **§ 7.1.2.2 Payment of Construction Manager's Fee for Corporate Overhead, Profit and Risk**

Based upon Applications for Payment submitted to the Owner by the Construction Manager, the Owner shall make progress payments to the Construction Manager of the Construction Manager's Fee for Corporate Overhead, Profit and Risk, based on the Construction Manager's GMP amount pending determination of final cost of the work, subject to a retainage amount of FIVE PERCENT (5%) to be held by the Owner. Payment of the Construction Manager's Fee for Corporate Overhead, Profit and Risk (OPR Fee) shall be made in proportion of the Cost of the Work completed based upon the following formula:

$$\text{Progress Fee amount} = \frac{\text{Construction Manager's Fee (in dollars, calculated per Section 5.1.1)}}{\text{Total months (between Bond Election and last in time Substantial Completion date)}}$$

The OPR Fee shall be subject to the retainage in the amount of FIVE PERCENT (5%).

##### **§ 7.1.2.3 Final Payment of Construction Manager's Compensation**

###### **§ 7.1.2.3.1 Conditions of Final Payment**

Final payment of the Construction Manager's Compensation for Preconstruction and Construction Phase Personnel services and Construction Manager's Fee for Corporate Overhead, Profit and Risk, including any retainage held by the Owner shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager, including the Construction Manager's correction of nonconforming Work to the satisfaction of the Owner; (2) a final Application for Payment of all Subcontracts has been received and approved by the Owner; (3) a final accounting for the Expenses to be Reimbursed has been submitted by the Construction Manager and reviewed and approved by the Owner; (4) a final Certificate for Payment has then been issued by the Owner to all Subcontractors; and (5) the Architect has certified the total Cost of the Work for the Project pursuant to Paragraph 1.4.3. Such final payment of the Construction Manager's Compensation for Pre-Construction and Construction Phase Personnel services and Construction Manager's Fee for Corporate Overhead, Profit and Risk shall be made by the Owner not more than THIRTY (30) days after the issuance of the Owner's final Certificate for Payment to all Subcontractors. The amount of the final payment of the Construction Manager's Compensation shall be calculated pursuant to the provisions of Article 4 and Article 5.

**§ 7.1.3** ~~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 certified amount 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 shall be made by the Owner not later than — ( — ) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~ **Payment of Cost of The Work and Reimbursable Expenses**

~~Payment of the Cost of the Work, including all Subcontracts and Self-Performed Work by the Construction Manager for the performance of the Work of the Project, and of all reimbursable expenses pursuant to Article 6 shall be governed by subparagraph 7.1.3 through 7.2.4 hereof.~~

**§ 7.1.4** ~~With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.~~ Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after review and action on the Application for Payment by the Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554. Notwithstanding the requirements of this section, to allow sufficient time for review and action on Applications for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554, the "receipt by the owner or the owner's representative of a payment request made pursuant to the contract" under Neb. Rev. Stat. § 45-1203 shall be deemed to occur at the regular meeting of the Owner's Board of Education immediately following the receipt of the Application for Payment by the Architect.

**§ 7.1.5** ~~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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications.~~ With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

**§ 7.1.5.1** In taking action on the Construction Manager's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data and that the Owner has made exhaustive or continuous on-site inspections or that the Owner 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 accountants acting in the interests of the Owner.

**§ 7.1.6** ~~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 for which the Construction Manager has made or intends to make actual 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.~~ 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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such

data to substantiate its accuracy as the Owner and Architect may require, including but not limited to Subcontractors' and supplier breakdowns of their respective costs into a schedule of values for such work. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.7** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- ~~.1~~ Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying Applications for Payment shall show 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- ~~.2~~ Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~.3~~ Add the Construction Manager's Fee, less retainage of — percent ( — %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~.4~~ Subtract retainage of — percent ( — %) from that portion of the Work that the Construction Manager self-performs;
- ~~.5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~.6~~ Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~.7~~ Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007 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 for which the Construction Manager has made or intends to make actual 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.

**§ 7.1.8** ~~The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1~~ Take 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 schedule of values, and subtract retainage of no more than TEN percent ( 10 %) when the scope of Work for the Project from which retainage is withheld is Fifty percent (50%) complete or less, and retainage of no more than FIVE percent (5%) when the scope of Work for the Project from which retainage is withheld is more than Fifty percent (50%) complete. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- ~~.2~~ Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, and subtract retainage of no more than TEN percent ( 10 %) when the scope of Work for the Project from which retainage is withheld is Fifty percent (50%) complete or less, and retainage of no more than FIVE percent (5%) when the scope of Work for the Project from which retainage is withheld is more than Fifty percent (50%) complete;
- ~~.3~~ Add the Construction Manager's Fee, and subtract retainage in the amount of TEN percent (10%) when the scope of Work for the Project from which retainage is withheld is Fifty percent (50%) complete or

less, and retainage of no more than FIVE percent (5%) when the scope of Work for the Project from which retainage is withheld is more than Fifty percent (50%) complete. The Construction Manager's Fee shall be computed as a dollar amount based the method and at the rate stated in Section 5.1.

- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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

§ 7.1.10 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 shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or 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. Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.11 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 shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or 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.

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- .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 by the Architect.;
- .4 the Architect has certified the total Cost of the Work for the Project pursuant to Section 1.4.4.
- .5 the Construction manager has submitted an AIA Document G707 consent of surety, if any, to final payment;
- .6 the Construction Manager has submitted notarized Subcontractor lien releases using AIA Document G706A;
- .7 the Construction Manager has submitted receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement and Subcontracts, to the extent and in such form as may be designated by the Owner;
- .8 the Construction Manager has submitted a Department of Labor Division of Employment Form No. 16, Certificate of Contribution Status, from the State of Nebraska Department of Labor certifying that the Construction Manager and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the last in time date of Substantial Completion;
- .9 the Construction Manager has submitted all Subcontractor's warranties, and maintenance and instruction manuals; and
- .10 the Construction Manager has submitted Record drawings and "as-built" drawings.

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner and Architect by the Construction Manager. Based upon



such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

...

**§ 7.2.5 Payment Contingent upon Availability of Appropriated Funds or Funds Approved by Owner's Board of Education**  
Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of the Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof. See Article 10 for termination and fees upon termination.

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. **§ 8.1** For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

...

<u>Workers' Compensation and Employer's Liability</u>	<u>See AIA A201, Article 11</u>
<u>Automobile Liability</u>	<u>See AIA A201, Article 11</u>
<u>Commercial General Liability</u>	<u>See AIA A201, Article 11</u>
<u>Excess Liability</u>	<u>See AIA A201, Article 11</u>
<u>Professional Liability (if applicable)</u>	<u>See AIA A201, Article 11</u>

**§ 8.1.1** Coverages, written on an occurrence basis, shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

**§ 8.1.2** Certificates of insurance acceptable to the Owner shall be filed by the Contractor with the Owner prior to commencement of the Contractor's Work. The insurance certificates shall be attached and incorporated to the Agreement as Appendix "E". These certificates and the insurance policies required by this Article 8 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

### **§ 8.3 Performance and Payment Bond**

The Construction Manager shall as required by Neb. Rev. Stat. § 52-118 furnish payment and performance bonds covering faithful performance of this Agreement, including all Work, and payment of obligations arising thereunder. The Construction Manager shall submit payment and performance bonds to the Owner prior to the commencement of any Work by the Construction Manager. Such payment and performance bonds shall be attached and incorporated to the Agreement at Appendix "D."

#### **§ 8.3.1 Pre-GMP Performance and Payment Bond Amounts**

Prior to approval by the Owner of the final negotiated GMP, the total amount of each of the Construction Manager's payment and performance bonds during this phase of the Project shall be the sum total of the following: (1) the Construction Manager's Compensation set forth in Articles 4 and 5 of this Agreement; and (2) the total contract amount for all Subcontracts awarded prior to approval of the GMP.

#### **§ 8.3.2 Post-GMP Performance and Payment Bond Amounts**

Upon approval by the Owner of the final negotiated GMP, the total amount of the Construction Manager's payment and performance bond shall be the sum total of the GMP amount.

### **§ 8.3.3 Allowance for Subcontractor Performance and Payment Bonds**

In subcontracting Work on the Project, the Construction Manager with prior written approval of the Owner, may require certain subcontractors on certain portions of the Work to obtain and furnish performance and payment bonds in the amount of such subcontract sums.

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[ ☒ ] Litigation in a court of competent jurisdiction

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The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims 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. services.

...

Not applicable

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**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed above.

...

### **§ 10.4 Termination upon Failure of Bond Issue Election**

In the event the legal voters of the Owner do not approve a bond issue to finance the Project at an election called for such purpose, this Agreement shall automatically terminate. The Construction Manager shall only be entitled to the compensation, if any, described in Article 4.

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007, A201-2007, as amended and attached hereto.

...

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases. Phases, as amended and attached hereto. The Drawings, Specifications and other documents prepared by the Architect and copies thereof furnished to the Construction Manager are for use solely with respect to this Project. Such documents are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

...

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases. Phases, as amended and attached hereto. The Agreement shall be governed by the laws of the State of Nebraska and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be Sarpy County, Nebraska.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, as amended and attached hereto, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

#### **§ 11.5.1 Acts or Omissions of Construction Manager's Employees**

The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or any of its Subcontractors. As part of that responsibility, Construction Manager shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Construction Manager's employees, subcontractors, and all other persons carrying out the Contract.

#### **§ 11.5.2 Use of Job Site and Security**

##### **§ 11.5.2.1 Job Site Security and Construction Fencing**

The Construction Manager shall be responsible for overall job site safety and security under Article 10 of AIA Document A201. Without limiting the foregoing, the Construction Manager shall install and maintain job site perimeter construction fencing, signage and other warnings pursuant to Section 10.2 of AIA Document A201. Construction fencing in and around the job site must be erected before any construction work, excavation or other site preparation begins, including repair to existing infrastructure. Design of all construction fencing must meet current OSHA standards. Construction fencing needs to be installed to prevent access from the Owner's staff, students and the general public to any construction sites/areas. Construction fencing will surround the entire job site and construction activity and be kept in place throughout the construction activity and not removed until the need has ceased, and the area made safe. Placement of any construction fencing needs to respect the surrounding area and acknowledge the presence of local environmental conditions – access or pathways, stairs, trees or vegetation, weather, equipment, working inside or outside etc. Placement of construction fencing also needs to recognize the difficulties that individuals with sight impairment face and not place them in danger through unexpected changes in travel routes or placement of obstacles. Placement of any construction fencing is to be reviewed by the Owner and its Risk Management Department. Where required, warning lights (i.e. orange flashing lights) may be required for safety reasons, and placement to be in accordance with OSHA standards.

##### **§ 11.5.2.2 Vehicle Parking**

The Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

##### **§ 11.5.2.3 Theft Deterrence Program**

The Construction Manager shall consult and coordinate with the Owner with analysis of cost of the institution of a theft deterrence program designed to restrict construction worker access to properties of the Owner that are currently in use, to maintain supervision of the Construction Manager's and the Construction Manager's Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from the Construction Manager's forces or the Construction Manager's Subcontractor's forces' actions, omissions, or failure to secure the Work or adjoining property.

#### **§ 11.5.3 Equal Opportunity in Employment**

**§ 11.5.3.1** The Construction Manager and all Subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, because of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status, as prohibited by the Nebraska Fair Employment Practice Act or federal law. The Construction Manager agrees to post in conspicuous

places available to employees and applicants, notices setting forth the Construction Manager's nondiscrimination policies. The Construction Manager and the Construction Manager's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status.

**§ 11.5.3.2** The Construction Manager hereby warrants and represents that it is in compliance with said Act. Any failure to so comply during the performance of this Agreement shall be a material breach of the Agreement. The Construction Manager by execution of this agreement certifies that the Construction Manager is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants as well as historically underutilized business subcontractors, and does not discriminate against any employee or applicant for employment or subcontractor by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. By execution of this agreement, the Construction Manager agrees to actively continue and implement this policy throughout any awarded project.

#### **§ 11.5.4 Compliance with Law**

As a material term of this Agreement, the Construction Manager shall at all times comply with all applicable federal and state statutes and local ordinances related to the Project. With regard to the supervision of Subcontractors performing the work of the Project, the Construction Manager shall be responsible for determining the applicability of such codes, ordinances, rules, and regulations to work of the Project, except those applicable to the design services of the Architect; for investigating, confirming and/or verifying compliance therewith; for filing of all documents that are required for compliance therewith; and for obtaining the approval of governmental authorities having jurisdiction over the Project. In addition, if not covered by the municipality's tree ordinance, the Construction Manager shall barricade and protect all trees on the Project.

#### **§ 11.5.5 Criminal History Checks**

**§ 11.5.5.1** The Construction Manager shall obtain all criminal history information regarding its "covered employees", as defined below. Before beginning any Work on the Project, Construction Manager, and all Subcontractors and suppliers, will provide written certification to the Owner that the Construction Manager has complied with the statutory requirements as of that date. Upon request by Owner, the Construction Manager will provide, in writing, updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. The Construction Manager shall assume all expenses associated with obtaining the initial criminal history record information and the Owner shall be responsible for expenses associated with any subsequent request. The Construction Manager shall include similar criminal history check provisions in all contracts with subcontractors and suppliers. The Construction Manager's Job Site Security Protocols are attached and incorporated as Appendix "C."

**§ 11.5.5.2** The Construction Manager will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If the Construction Manager receives information that a covered employee has a reported disqualifying criminal history, then the Construction Manager will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then the Construction Manager agrees to discontinue using that covered employee to provide services on Owner's Project.

**§ 11.5.5.3** For the purposes of this Section, "covered employees" means employees, agents or Subcontractors of the Construction Manager who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner or one of the following offenses: if at the time of the offense, the victim was under 19 years of age or enrolled in a public school; a felony offense under Nebraska Criminal Code Article 3 Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under the Nebraska Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 et seq.; or an equivalent offense under federal law or the laws of another state. The Owner may take into consideration the nature and circumstances of the criminal history to assure its interests in protecting school children and in its discretion determine individual can serve on Owner's Project.



**§ 11.5.5.4** The Construction Manager shall establish a construction site security protocol which shall include providing all employees of the Construction Manager, contractors, Subcontractors, material suppliers and other Project related personnel with a "Project" badge or sticker containing a unique identifier number. This unique identifier number must be logged by the Construction Manager's Site Superintendent or Project Manager so as to associate each individual's name and company with the number on the badge. A copy of the log shall be kept at all times in the office of the Construction Manager's Site Superintendent and must be submitted to the Owner at the end of each week. If wearing the Construction Manager-provided "Project" badge will interfere with the work being performed by that individual, the Construction Manager shall provide a sticker with the necessary information for identification for the affected individual, which shall include the unique number on the identification. This sticker may be affixed to the individual worker's hard hats. All means of identification other than what is provided by the Construction Manager must be approved by the Construction Manager's Site Superintendent or Project Manager prior to implementation by the Construction Manager. Identification must be visible at all times. Individuals failing to comply with the job-site security requirements may be required by the Construction Manager or the Owner to leave the job-site.

**§ 11.5.6 Contributions under Nebraska Employment Security Law**

The Construction Manager and all Subcontractors engaged to perform any part of the Work shall make payment to the Unemployment Compensation Fund of the State of Nebraska of all contributions and interest due under the provisions of the Employment Security Law, Neb. Rev. Stat. §§ 48-601, et seq. (Reissue 1988), as amended, on wages paid to individuals employed in the performance of the Contract; and before final payment shall be made of the final three percent (3%) of this Contract, the Construction Manager shall secure and file with the Owner, and cause any Subcontractor to secure and file with the Owner, written clearance from the Commissioner of the Department of Labor of the State of Nebraska, certifying that all payments then due of contributions or interest which may have arisen under this Contract have been made by the Construction Manager or any Subcontractor to the Unemployment Compensation Fund.

**§ 11.5.7 Verification of Immigration Status**

The Construction Manager agrees to use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. This requirement applies to all Subcontractors of the Construction Manager. The Construction Manager shall, by written agreement, require compliance with the federal immigration verification system by all Subcontractors. If the Construction Manager is an individual or sole proprietorship, the following applies:

- .1** The Construction Manager must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
- .2** If the Construction Manager indicates on such attestation form that he or she is a qualified alien, the Construction Manager agrees to provide the US Citizenship and Immigration Services documentation required to verify the Construction Manager's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- .3** The Construction Manager understands and agrees that lawful presence in the United States is required and the Construction Manager may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**§ 11.5.8 Nebraska Employee Classification Act**

The Construction Manager agrees to abide by the provisions of the Nebraska Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912. The Construction Manager also agrees to require each Subcontractor to abide by the same statute. In compliance with that Act, the Construction Manager shall submit to the Owner, upon execution of the Agreement, the affidavit marked as Appendix "G," attached hereto and incorporated herein by this reference. The Construction Manager further acknowledges that providing a false affidavit under Neb. Rev. Stat. § 48-2911 may subject the Construction Manager to the penalties of perjury and upon a second or subsequent violation the Construction Manager shall be barred from contracting with the State of Nebraska or any Nebraska political subdivision for a period of three (3) years after the date of discovery of the falsehood. The Construction Manager shall require any and all Subcontractors who perform work pursuant to the Agreement to provide a similar affidavit, which shall be made available to the Owner upon request.

#### **§ 11.5.9 Limited Mutual Waiver of Consequential Damages**

Except for those losses covered by insurance required by the Contract Documents and specific items of damages allowed for in this Agreement and in the Contract Documents, the Construction Manager and the Owner waive all Claims against each other for consequential damages arising out of or relating to this Contract, including consequential damages due to either party's termination of this Agreement.

#### **§ 11.5.10 Sovereign Immunity**

By entering into this Agreement, the Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

#### **§ 11.5.11 Force Majeure**

None of the parties hereto shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

#### **§ 11.5.12 Independent Contractor**

The Construction Manager shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. The Construction Manager shall assume sole responsibility for any debts or liabilities that may be incurred by Construction Manager in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing Construction Manager or its agents and/or employees to act as an agent or representative of or on behalf of the Owner, or to incur any obligation of any kind on behalf of the Owner. Construction Manager agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner employees will extend to the benefit of Construction Manager or the Construction Manager's agents and/or employees as a result of this Agreement.

#### **§ 11.5.13 Kickbacks**

The Construction Manager certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Construction Manager breaches or violates this warranty, the Owner may, at its discretion, terminate this Agreement without liability to the Owner, or deduct from the Agreement price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

#### **§ 11.5.14 Notice**

All notices or invoices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

#### **§ 11.5.15 Severability**

This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

#### **§ 11.5.16 No Waiver of Rights**

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

#### **§ 11.5.17 Warranty**

The Construction Manager warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing construction management services under similar circumstances, and with the requirements of the Contract Documents; and it is responsible for the construction of the Work of the Project in accordance with all designs, drawings, specifications, and other services furnished by the Owner through the Architect for the Project.

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- .3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

Appendix "A" – Excel 16 Division Spreadsheet Report  
Appendix "B" – Construction Manager's Efforts Schedule  
Appendix "C" – Job Site Security Requirements  
Appendix "D" – Construction Manager Payment and Performance Bonds  
Appendix "E" – Construction Manager Certificate of Insurance  
Appendix "F" – Construction Manager Rental Rate Schedule  
Appendix "G" – Construction Manager's Affidavit  
Appendix "H" – Construction Manager Labor Rates for Aid-to-Construction Work

**SARPY COUNTY SCHOOL DISTRICT 77-0046, a/k/a**  
**SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS**

**BOYD JONES CONSTRUCTION COMPANY**

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

\_\_\_\_\_  
Cori Swanson, President Board of Education  
**(Name/Title)**

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

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

\_\_\_\_\_  
Tim Meyer, Sr. V.P. Operations  
**(Name/Title)**

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

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

### **AIA® Document D401™ – 2003**

I, Rex R. Schultze, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:34:21 ET on 12/30/2019 under Order No. 5551106211 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### the following PROJECT:

*(Name and location or address)*

Springfield Platteview Community Schools

Project A – Construction of a new, three section elementary school building and related site utilities and infrastructure work and required furnishing, fixtures and equipment, generally consisting of approximately 70,000 square feet to accommodate 500 students, to be located on the northeast side of the intersection of 9th and Main streets in Springfield, Nebraska ("Project A");

Project B – Construction of additions and renovations to the existing Westmont Elementary School building located at 13210 Glenn Street, Omaha, Nebraska, with final scope of such additions and renovations to be determined at a later date ("Project B").

Collectively Project A and Project B shall be the "Project" or "Projects".

### THE OWNER:

*(Name, legal status and address)*

Sarpy County School District 77-0046, a/k/a Springfield Platteview Community Schools

A political subdivision of the State of Nebraska

14801 S. 108th Street

Springfield, NE 68059

402-592-1300

(Hereinafter referred to as "Owner").

### THE ARCHITECT:

*(Name, legal status and address)*

Alley Poyner Macchietto Architecture, Incorporated

A Nebraska corporation

1516 Cuming Street

Omaha, NE 68102

402-341-1544

(Hereinafter referred to as "Architect" or "Project Architect").

### THE CONTRACTOR:

*(Name, legal status, address and other information)*

Boyd Jones Construction Company

A Nebraska corporation

950 S. 10 th Street, Suite 100

Omaha, NE 68108

402-553-1804

(Hereinafter referred to as "Construction Manager" or "CM@R").

### 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.

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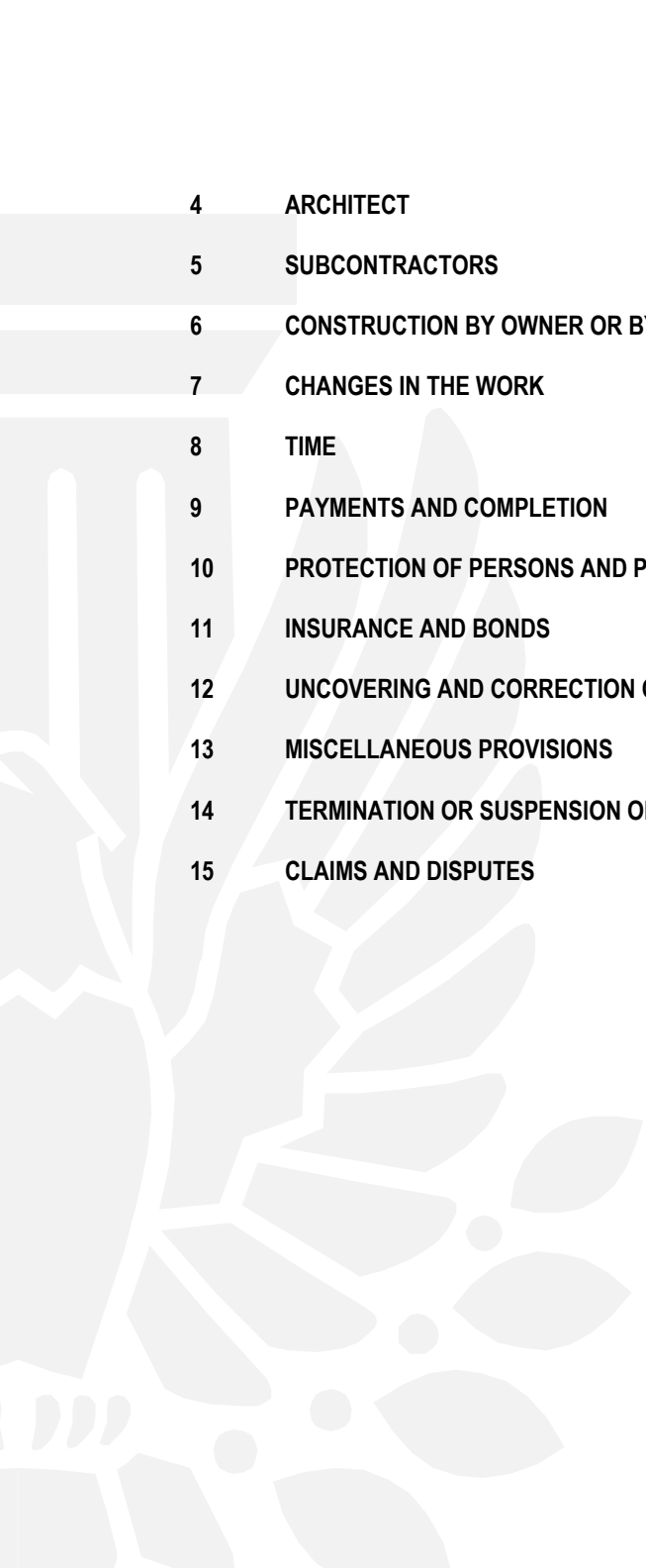
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**User Notes:**

(1399667010)

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Contractor (hereinafter the Agreement, as amended,) and consist of the Agreement, as amended, Conditions, all sections of the Project Manual, including the Contract, as amended (General, Supplementary and other Conditions), Drawings, Specifications and Addenda issued prior to execution of the Contract, other documents listed in the Agreement, as amended, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner or Architect.

§ 1.1.1.1 The Agreement, as amended, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if signed by Contractor and the authorized representative of Owner's Board of Education. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein. Any reference to any Contract Document shall mean the document as amended and/or supplemented for this Project.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract, as amended, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Education, and signed by the representative of Owner's Board of Education who is authorized to sign contracts. As a material consideration for the making of the Contract, modifications to the Contract shall not be construed against the maker of said modifications. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.2.1 To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Education. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, specifications, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications and the standards set forth in Section 2.1.4 of AIA Document B201-2007, as amended. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the



Project, and are free from material defects or omissions. The Construction Documents shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of construction documents.

**§ 1.1.3.1** The Work shall include the obligation of the Contractor to visit the site of the Project prior to submitting a proposal. Such site visit shall be for the purpose of familiarizing the Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas.

**§ 1.1.3.2** Nothing in these General Conditions shall be interpreted as imposing on either the Owner or the Architect or their respective agents, employees, officers, directors, or consultants any duty, obligation, or authority with respect to any items that are not intended to be incorporated into the completed Project, or that do not comprise the Work including, but not limited to, the following: shoring, scaffolding, hoists, temporary weatherproofing, or any temporary facility or activity because these are the sole responsibility of the Contractor.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams, and shop drawings following approval by the Architect.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 CONSTRUCTION DOCUMENTS**

Construction Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Construction Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 MANUFACTURER'S SPECIFICATIONS**

All references to the "Manufacturer's Specifications", "Manufacturer's Directions" or "Manufacturer's Recommendations" shall mean and refer to the referenced manufacturer's published specifications or manuals. Upon written approval of the Architect, such publications shall be made a part of and incorporated into the Contract Specifications as though repeated therein in full, and all manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned accordingly, unless specified to the contrary by the Architect.

#### **§ 1.1.9 PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

#### **§ 1.1.10 PROJECT MANUAL ADDENDA**

Project Manual Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

#### **§ 1.1.11 APPROVED, APPROVED EQUAL, APPROVED EQUIVALENTS, OR EQUAL**

The terms "Approved" and "Approved Equal" relate to the substitution of materials, equipment, or procedure in writing by the Architect prior to receipt of bids.

#### **§ 1.1.12 ABBREVIATIONS**

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**User Notes:**

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AIA:	American Institute of Architects
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute
AISC:	American Institute of Steel Construction
ASA:	American Standards Association
ASTM:	American Society of Testing Materials
AWSC:	American Welding Society Code
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act
EPA:	Environmental Protection Agency
FS:	Federal Specification
NES:	National Electrical Code
NIC:	Not in Contract. Indicates work not to be done by this Contractor under this Agreement
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
UL:	Underwriters Laboratories, Inc.

#### **§ 1.1.13 BIDS or BIDDING**

The terms "Bids" or "Bidding" shall include any kind of competitive purchasing under Nebraska public letting statutes.

#### **§ 1.1.14 CONTRACT SUM**

"Contract Sum" shall mean the Guaranteed Maximum Price, when the Agreement is a Construction Manager at Risk Agreement (A133-2009), and the Contract Sum, when the Agreement is a Contractor Agreement (A101-2007).

#### **§ 1.1.15 MISCELLANEOUS DEFINITIONS**

##### **§ 1.1.15.1 FURNISH**

The term "furnish", unless specifically limited to context, means furnishing to the Project Site the items specified to include unpacking and assembly if necessary. "Install" means incorporation in the Work, including all necessary labor, materials, equipment and connections necessary to complete installation. "Provide" means furnish and install.

##### **§ 1.1.15.2 BUSINESS DAY**

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's President for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Education on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or other special events.

##### **§ 1.1.15.3 CALENDAR DAY**

A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

##### **§ 1.1.15.4 HOLIDAYS**

Owner-approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

##### **§ 1.1.15.5 WORK DAY**

Work days are all calendar days except Holidays.

##### **§ 1.1.15.6 ANTICIPATED WEATHER DAYS**

An allowance of regular Work Days, established as anticipated Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.5.4 lists required Anticipated Weather Days.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless he shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of his Proposal. The Architect, in ease of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 In case of conflicting provisions between or within the Drawings and Specifications, the Contractor is deemed to have accepted the reasonable method of completing the Work as agreed to by the Owner and the Contractor.

§ 1.2.3.2 All repeated features must be constructed alike, although drawn in detail only once, and similarly all detail and ornament must be continued throughout all moldings, bands, etc.

§ 1.2.3.3 Wherever Work is specified to be done "as directed", the Contractor must obtain specific direction from the Owner's representative before undertaking such Work.

§ 1.2.4 The Contractor is solely responsible for coordination of bidding and Scope of Work of Subcontractors and shall assume full responsibility for complete coordination of the various Subcontractors.

§ 1.2.5 In the interest of conciseness, references to specification sections and details are preceded by the word "see". Any such reference is to be interpreted to include the phrase "and comply with".

§ 1.2.6 Wherever an article, device or piece of equipment is referred to in the singular, such reference shall apply to as many of such articles as are shown in the Contract Documents or as are required to complete the installation.

## § 1.2.7 RELATION OF SPECIFICATIONS AND DRAWINGS

General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal inconsistencies, then the Contractor shall base the bids and construction on the most expensive combination of quality and quantity of work indicated. For purposes of construction, the Architect shall determine the appropriate Work, after the Contractor brings the inconsistency to the Architect's attention. Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

## § 1.2.8 MATERIALS, EQUIPMENT AND PROCESSES

Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions which results in equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and

Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting completion. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. The Architect shall review and respond to proposed substitutions within fifteen (15) calendar days of receipt. The Owner may charge the Contractor for the Architect's time in reviewing and responding to an unreasonable number of substitutions requests by the Contractor. The Contractor shall bear no costs for the Architect's time in reviewing and responding to substitution requests from the Owner or the Architect. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contractor Documents, equally compatible with the existing installations and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved by the Architect and Owner, however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

#### **§ 1.2.9 STANDARDS AND REQUIREMENTS**

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the date of execution of the Agreement by the last party to execute said Agreement shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the date of execution of the Agreement and until Final Completion, pursuant to the terms of the Agreement between Owner and Architect. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

#### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

#### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. These Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization.

#### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND CONSTRUCTION DOCUMENTS**

**§ 1.5.1** Provided that all payments have been made to the Architect in accordance with the agreement with the Owner, all Construction Documents shall be exclusively owned by the Owner and the Owner shall own all copyrights in and to the Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Construction Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce the Construction Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Construction Documents on other projects or for additions to this Project outside the scope of the Work without the



specific written consent of the copyright holder. All copies of the Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

## **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Construction Documents or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the Nebraska public school district identified in the Contract Documents. The Board of Education, by majority vote, is the only representative of the Owner, a public school district and political subdivision of the State of Nebraska, having the power to enter into or amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, or agree to an extension to the date of Substantial or Final Completion. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the President, who may delegate responsibilities as appropriate. Owner's Board of Education hereby delegates to the President or designee the authority to approve changes to the Work where such changes are within the Owner's contingency. Any such change shall be confirmed in writing between the Contractor and Owner's President or designee, and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the President or Board of Education; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

**§ 2.1.2** It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated, such property belonging to a political subdivision of the State of Nebraska. It shall be further understood that this Contract is not written for the benefit of third parties.

**§ 2.1.3** The Owner shall require the Contractor and the Architect to meet periodically at mutually-agreed-upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

**§ 2.1.4** The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

**§ 2.1.5** The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents beyond the amount of professional liability or E&O insurance provided by Architect.

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** The Owner, being a political subdivision of the State of Nebraska, must have adequate funds and financing as provided by law prior to award and execution of the Contract Documents.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner; the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Other than the metes and bounds noted in the legal description of the site, the Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work beyond the amount of professional liability or E&O insurance provided by surveyor. Other than the metes and bounds noted in the survey, if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements beyond the amount of professional liability or E&O insurance provided by surveyor.

**§ 2.2.4** The Owner shall furnish, for information only and not as a Contract Document, such surveys or other information as it has in its possession as to the physical characteristics, legal limitations and utility locations for the site of the Project as it has in its possession. The Contractor shall confirm the location of each utility on the approved plans therefor on file with the public works department. The Contractor shall not be responsible for additional cost incurred should the utilities not be found in the location shown on said approved plans, either horizontally or vertically. The Contractor represents that he has inspected the site and available documents, and has satisfied himself as to the condition thereof including, without reasonable limitation, all apparent structural, surface and subsurface conditions thereof. The Contractor shall make no claims for any subsurface conditions shown or which could be reasonably ascertained from any investigations, including soil borings, tests and reports provided by the Owner.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor an electronic version of the Construction Documents for purposes of making reproductions pursuant to Section 1.5.2 along with a to be determined number of hardcopy sets at no cost.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct defective Work that is not in accordance with the requirements of the Contract Documents or the Construction Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The authorized Owner's representative having the legal right to stop the Work shall be limited to the Owner's President.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Document and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of any such default or neglect with diligence and promptness, the Owner may upon written notice to the Contractor, and without prejudice to other remedies it may have, correct any such deficiency. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the necessary cost of correcting any such deficiency, including compensation for the Architect's and other consultants' additional services and expenses made necessary by such default, neglect or failure.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative and includes the Construction Manager at Risk, if applicable.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents, and submittals approved pursuant to Section 3.12.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract activities of

the Owner (or Owner's Owner's Designated Representative or Program Manager (if any), if applicable), or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.1.4** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

## **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract and GMP Amendment by Contractor is a representation that the Contractor has visited the site, become familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all reasonably known matters which may in any way affect the Work or its performance. The Contractor represents and warrants by submission of a Proposal that he has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work. The Contractor shall not be entitled to any additional time or compensation for Contractor's failure to visit the site, or for any additional Work caused by the Contractor's fault, by improper construction, or by Contractor's failure to visit the site or to carefully study and compare the Contract Documents prior to execution of the Work. The Contractor further represents that the Contractor is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of Contractor's failure to follow the foregoing procedure and familiarize himself with all local conditions and the Contract Documents will not be permitted.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not solely for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect.

**§ 3.2.3** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality or omission in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived..

**§ 3.2.4** If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his warranty, or will result in a limitation



of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15 when the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect. Contractor shall not be entitled to additional compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents prior to the execution of the Work. Contractor shall take field measurements, verify field conditions, and shall carefully compare them to the Construction Documents. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

**§ 3.2.5** By entering into the Agreement with the Owner for the Work, the Contractor acknowledges that it has examined the Contract Documents, the character of the site and any existing structures, and is acquainted with the Work and the Contract Documents.

**§ 3.2.6** Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and/or hazardous materials surveys for the particular job sites involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. In the event of a conflict between this section or between section 3.14.3 hereof and the One-Call Notification System Act, Neb. Rev. Stat. § 76-2301 et seq., the One-Call Notification System Act shall prevail and control.

**§ 3.2.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.

**§ 3.2.8** The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Consistent with the prevailing construction industry performance for similar projects in the area and such other performance standards expressly imposed on the Contractor by the Contract Documents. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. Contractor shall if required by Owner, require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall if required by Owner, contain a current photograph and the worker's name in a typeface large enough to be seen from a reasonable distance. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal of the offending employee from all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's subcontractor's forces, or one serious infraction, shall constitute a substantial breach of the Agreement justifying the immediate termination by Owner pursuant to Article 14. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense. Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work. Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.

**§ 3.3.5** To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, if not included in a lump sum bid, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

**§ 3.3.6** The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section 3.3.6 are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

**§ 3.3.7** It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

## **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.2.1** After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products and place those specified only under the conditions set forth in the specifications. Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when, in the judgment of the Owner, in consultation with the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

**§ 3.4.2.2** The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the

adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

**§ 3.4.2.3** By making requests for substitutions based on Section 3.4.2 above, the Contractor:

**§ 3.4.2.3.1** represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

**§ 3.4.2.3.2** represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

**§ 3.4.2.3.3** certifies that the cost data represented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

**§ 3.4.2.3.4** will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

**§ 3.4.4** For all equipment furnished by others to be installed by the Contractor, the Contractor shall use manufacturer's detailed drawings as approved by the Architect, to establish roughing-in dimensions and location of services.

**§ 3.4.5** The Contractor shall inspect all materials as delivered to the premises and shall reject any materials that will not conform with the Contract Documents when properly installed.

**§ 3.4.6** Including, but not limited to, the specific requirements of Section 10.1, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct.

**§ 3.4.7** Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This Section requiring advance notice does not apply to a publicly-held corporation.

#### **§ 3.4.8 CRIMINAL HISTORY CHECKS**

**§ 3.4.8.1** Contractor shall obtain all criminal history information regarding the "covered employees", as defined below, of the Contractor and certifications of criminal history compliance from all agents and subcontractors of the Contractor. Before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor has complied with the statutory requirements as of that date. Upon request by Owner, Contractor will



provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

**§ 3.4.8.2** Contractor will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

**§ 3.4.8.3** For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses: if at the time of the offense, the victim was under 19 years of age or enrolled in a public school: a felony offense under Nebraska Criminal Code Article 3 Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under the Nebraska Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 et seq.; or an equivalent offense under federal law or the laws of another state. The Owner may take into consideration the nature and circumstances of the criminal history to assure its interests in protecting school children and in its discretion determine individual can serve on Owner's Project.

#### **§ 3.4.8.4 OWNER'S ADDITIONAL REQUIREMENTS RELATED TO CRIMINAL HISTORIES**

In addition, Contractor will at least annually obtain criminal history record information that relates to any employee of the Contractor and certifications of criminal history compliance from all agents, or subcontractors of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or, other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present".

#### **§ 3.5 WARRANTY**

*(Paragraph deleted)*

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy or assumed beneficial use of the damaged or defective portion of the Project. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work within the Project, and each such individual warranty shall run from Substantial Completion date of each Project. Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the

manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this Section are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

**§ 3.5.2** Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents.

**§ 3.5.3** In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten (10) business days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this Section shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

**§ 3.5.4** When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

**§ 3.5.5** The Contractor agrees to assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All forms will be required to be submitted prior to Final Payment.

**§ 3.5.6** The warranties of Contractor provided in Sections 3.5.1, 3.5.2, and 3.5.3 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

**§ 3.5.7** Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the warranty period, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any warranty items which are observed or reported during the warranty period. Contractor shall prosecute such warranty work without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty period. If Contractor fails to provide the schedules to Owner and Architect, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

**§ 3.5.8** Prior to receipt of Final Payment, Contractor shall:

- .1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of Substantial Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Substantial Completion;

- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required by the express terms of the Contract Documents;
- .4 Bind all warranties, both electronically and in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing.
- .8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner.

**§ 3.5.9** ALL WARRANTIES SHALL COMMENCE NO EARLIER THAN THE SUBSTANTIAL COMPLETION DATE OF EACH PROJECT.

### **§ 3.6 TAXES**

Owner is an exempt entity under the tax laws of the State of Nebraska. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. Contractor shall obtain Resale Certificates from Contractor's suppliers. Failure of Contractor or any Sub-Contractor to obtain Resale Certificates from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

### **§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

**§ 3.7.1** The Contractor shall be responsible for making and submitting application for the building permit. The Owner shall pay the municipality directly for the building permit and all other development "impact" fees, if any. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses, and inspections necessary for proper execution of the Contract and which are legally required when bids or proposals are received. Such fees and expenses shall only be reimbursable to Contractor if expressly agreed to herein.

**§ 3.7.1.1** The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar connection charges.

**§ 3.7.1.2** The Contractor shall pay directly all temporary utility charges, tap charges, and water meter charges, without reimbursement from Owner. After consultation with the Owner, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a land-disturbing-activity permit for the Project. The Owner's consultants will prepare a Storm Water Pollution Prevention Plan (SWPPP) and the Notice of Intent (NOI) for the project, and shall obtain the NPDES storm water construction permit. The Contractor shall implement all measures identified in the SWPPP. The Contractor shall be responsible for implementing all measures identified in the SWPPP, conducting regular site inspections, complying with all record keeping requirements included in the NPDES permit and the SWPPP, implementing all maintenance measures identified during inspections, and amending the SWPPP as necessary if erosion control measures are found to be ineffectual. Also after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with all regulations administered by the Nebraska Department of Environmental Quality (NDEQ) and local authorities. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, Contractor's subcontractors, the Project, or the Owner. Owner hereby holds Contractor



harmless from and agrees to indemnify Contractor for all fines, penalties, costs, damages and expenses arising out of, caused by, or related to mistakes made by Owner's consultants in their preparation of the SWPPP and NOI.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any invoices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 3.7.3** If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner, the Owner's Designated Representative or Program Manager (if any), and the Architect before conditions are disturbed and in no event later than three (3) business days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and report findings and a recommended resolution in writing to Owner and Contractor. If Owner's Board of Education and Contractor cannot agree on an equitable adjustment to the Contract Sum or Contract time, then either party may pursue alternative dispute resolution as provided for in Article 15 within ninety (90) calendar days of the Architect's recommendation.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.7.6** Copies of any and all permits, licenses and certificates shall be delivered to the Owner as soon as they are obtained. Along with the request for final payment, the Contractor shall deliver the originals of such permits, licenses and certificates to the Owner.

**§ 3.7.7** The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner and the Program Manager. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

## **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection, unless required to do so by the terms of the Construction Documents.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum, or the Owner's Contingency, at Owner's discretion shall be adjusted accordingly. The amount of the adjustment shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.8.4** When performing Work under allowances, Contractor shall solicit and receive not less than three (3) written proposals unless this requirement is waived by the Owner's designated representative, and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The responsibility of the superintendent is to supervise, schedule, coordinate and manage field operations. The superintendent is not to be used as a tradesman. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-Subcontractors and their employees. The Superintendent shall provide his or her email address and cell phone number to the Owner and the Architect and shall be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The Superintendent shall be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

**§ 3.9.1.1** As directed by the Architect or Owner's Representative, there is to be held at a location designated by the Architect or Owner's Representative, a meeting called by the superintendent as representative of the Contractor of the representatives of the various trades engaged about the Work for furthering the progress of the Work and giving of clarifications by the Architect and instructions by the Owner. If the Contractor's representatives fail to attend or to execute the instructions given to them, they shall on request of the Owner be dismissed from the Work and other representatives must be immediately substituted.

**§ 3.9.1.2** The Contractor shall not change the Superintendent without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The Superintendent shall be present at the Project until substantial completion. At the Owner's request, the Contractor shall assign a different Superintendent to the Project.

**§ 3.9.2** Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within thirty (30) calendar days of Substantial Completion.

**§ 3.9.3** Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.

**§ 3.9.4** Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under General Conditions for such day.

**§ 3.9.5** Questions about plan interpretation or directions shall be submitted by Contractor's superintendent to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, ten (10) calendar days after being awarded the Contract and as part of its Guaranteed Maximum Price proposal, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall not be changed without the written consent of the Owner and Architect. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval. The Owner's or Architect's silence as to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligation to meet those time limits, nor shall it make the Owner or Architect liable for any of Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Owner's or Architect's silence as to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

**§ 3.10.2** The Contractor shall prepare and keep current, for the Architect's and Owner's Representative's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. Neither the Contractor's preparation nor the Architect's receipt or review shall modify the Contractor's responsibility to make required submittals or to do so in a timely manner to provide for review in accordance with Section 4.2.7 as modified herein, except to the extent that the Architect's review extends more than seven (7) calendar days after notice to the Architect that a timely review is needed. The submittal schedule shall include a resource table listing all contractors, sub-contractors, design team, and Owner, and shall be resource-loaded. The Contractor shall also generate an activity-within-resource report and keep these current.

**§ 3.10.2.1** The schedule of submittals shall be submitted along with the construction schedule.

**§ 3.10.2.2** Submission and review of the schedule shall not relieve the Contractor of its obligations to meet the time limits of the Contract.

**§ 3.10.2.3** Additional provisions for submittal of the construction schedules are included in the specifications.

**§ 3.10.3** The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner, Owner's Designated Representative or Program Manager (if any) and Architect.

**§ 3.10.4** Should the Contractor fail to comply with the progress schedule or, in the Owner's opinion, otherwise fails, refuses, or neglects to supply a sufficient amount of labor or material in the prosecution of the Work, Owner shall have the right to (1) direct the Contractor to furnish such additional labor and/or materials as may, in the Owner's opinion, be required to comply with the progress schedule or otherwise diligently prosecute the Work, or (2) furnish such additional labor and/or materials as may be required to comply with said schedule. Any costs incurred by Owner

pursuant to the exercise of its rights under this Section shall be borne by the Contractor and shall not increase the Contract Sum.

**§ 3.10.5** The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, most current Construction Schedule, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, field test records, inspection certificates or records, manufacturers' certificates, Product Data, Samples and similar required submittals. These shall be available to the Architect, the Owner, and the Program Manager at all times and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also display the most current Construction Schedule at the Site for reference and reliance by the Owner and Architect.

**§ 3.11.2** In addition to any other requirement in the Contract Documents and prior to installation, the Owner may require the Contractor to furnish or cause a subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor must provide the Architect, with copies to the Owner and Owner's Designated Representative or Program Manager (if any), with copies of all submittals made to regulatory agencies.



**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and verified that the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. The Contractor must correct, at its sole cost and expense and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof, except for any such errors or omissions which are within Architect's statutory or contractual design responsibility.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Unless the Contractor is providing professional services as allowed herein, the Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. A licensed professional architect or engineer must prepare plans, specifications and estimates for all the Work, as governed by the Nebraska Engineers and Architects Regulation Act. In the event that Contractor retains a licensed design professional under the terms of this Section, Contractor shall require that the licensed design professional carry comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

**§ 3.12.11** The Contractor shall submit complete drawings, data and samples to the Architect at least fifteen (15) calendar days prior to the date the Contractor needs the reviewed submittals and samples returned. Additional provisions for shop drawings, product data and samples are included in the specifications. The Contractor shall be

prepared to submit color samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) calendar days of the award of Subcontract(s). All color samples required for the Work shall be received within sixty (60) calendar days of the date of the approval of the Contract Sum or Guaranteed Maximum Price. Once samples of all key items are received, the Architect will finalize color selections.

**§ 3.12.12** The Contractor shall submit the number of copies of product data and samples which the Contractor and subcontractors need for their use, plus two additional sets for the Architect, one additional set for the Owner and one additional set for each of the Architect's consultants involved with the particular section of Work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect, plus one additional opaque print for each of the Architect's consultants involved with the particular section of Work. The reproducible transparency will be marked by the Architect and/or his consultants. After final review and correction of the submittal, the Contractor shall send one corrected set to the Architect and each of the Architect's consultants involved with the particular section of Work.

**§ 3.12.13** The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

**§ 3.12.14** The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed professional engineer.

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** The Contractor shall provide adequate protection throughout the course of the Work for all trees and shrubs on the site indicated in the Contract Documents as not to be removed. The Contractor shall be responsible for damage to any such trees or shrubs during the period of construction and shall replace or repair any trees or shrubs damaged by the Contractor, its Subcontractors or employees, with plantings acceptable to the Owner at no cost to the Owner. Damaged sod areas shall be seeded acceptable to the Owner. All landscape repairs shall carry one (1) year full guarantee.

**§ 3.13.3** The Contractor shall enforce the Owner's instructions regarding signs, advertisements, noise, fires and smoking.

**§ 3.13.4** The Contractor shall keep the site of construction reasonably free from weeds during the course of construction. The Contractor shall cut all weeds on the site so as to discourage further germination.

**§ 3.13.5** All utilities, curbs, drives, streets, buildings, mechanical and electrical equipment, etc., which are damaged or cut during construction and are to be used after construction shall be repaired such that the quality of the repaired item equals or exceeds its condition prior to construction.

**§ 3.13.6** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

**§ 3.13.7** The Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.

**§ 3.13.8** Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and

equipment likely to cause hazardous conditions. Without limitation of any other provision of the Construction Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy.

**§ 3.13.9** Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building.

**3.13.10** Work will be performed by Contractor in accordance with the Contract Documents, or other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time. The Contractor must not permit work outside of hours established in the Contract Documents on a Saturday, Sunday or other County, State or federal holiday without the written consent of the Owner, given after prior written notice to the Architect and any other applicable consultants; such consent, if given, may be conditioned upon payment by the Contractor of the Owner's, Architect's and any other applicable consultants' additional costs and fees, testing or regulatory agency costs incurred in monitoring such off-hours Work. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times in the interest of the safety and protection of persons or property at the Site or adjacent thereto, or in the event of an emergency. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent and person responsible for the protection of persons and property at the Site and compliance with all applicable laws and regulations, if different from the superintendent.

**§ 3.13.11** Additional provisions for use of site are included in the Specifications.

#### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Construction Documents and Contract Documents. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

**§ 3.14.3** The Contractor shall locate, protect, and save from injury utilities of all kinds, either above or below grade, inside or outside of any structure, found in the areas affected by its Work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect result of any of its Work and shall repair all such damage at its expense and as a part of the Work included in the Contract Documents. The Contractor shall not be entitled to any increase in the Contract Sum or the Contract Time on account of such damage to any utility.

**§ 3.14.4** No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

**§ 3.14.5** Additional provisions for cutting and patching of work are included in the Specifications.

#### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations



shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

**§ 3.15.3** The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

**§ 3.15.4** After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

**§ 3.15.5** Additional provisions for cleanup are included in the Specifications.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect and their designated representatives, access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, SHALL WAIVE AND RELEASE CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT, AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect in writing.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S DESIGNATED REPRESENTATIVE OR PROGRAM MANAGER (IF ANY), ARCHITECT, OWNER'S DESIGNATED REPRESENTATIVE OR PROGRAM MANAGER, OWNER'S BOARD OF EDUCATION,

ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF TO THE EXTENT THE WORK IS NOT COVERED BY BUILDERS RISK INSURANCE PROCEEDS) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF NEBRASKA.

**§ 3.18.2** IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

**§ 3.18.3** THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY NEBRASKA LAW.

**§ 3.18.4** THE OWNER MAY CAUSE ANY OTHER CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

**§ 3.18.5** THE PROVISIONS OF SECTION 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

**§ 3.18.6** ONLY TO THE EXTENT ALLOWED BY LAW, THE OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR, IT'S DIRECTORS, OFFICERS, AND EMPLOYEES, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PROJECT BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT

ACTS OR OMISSIONS OF THE OWNER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE OWNER, ANYONE IT CONTROLS OR EXERCISES CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR OR OTHER INDEMNIFIED PARTIES.

### § 3.19 ANTITRUST VIOLATION

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C. § 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new architect whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

§ 4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and the Contract Documents by the duties, responsibilities, or activities of the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Owner's Designated Representative or Program Manager (if any) will provide administration of the Contract as described in the Contract Documents. The Architect and Owner's Designated Representative or Program Manager (if any) will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract Documents.

§ 4.2.2 Architect or his authorized representative shall visit the site at least once per week (or more per week when deemed necessary by the Owner's President or when necessary to protect Owner's interests) and at other intervals appropriate to the stage of construction, to inspect the progress, quantity and quality of the work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Construction Documents and the Contract Documents and on time. Furthermore, an appropriate number of job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, Owner's Designated Representative or Program Manager (if any) the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction

means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

**§ 4.2.3** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

#### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect and Owner's Designated Representative or Program Manager (if any) about matters arising out of or relating to the Contract. However, Owner reserves the right to communicate directly with the Contractor. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** As further provided in the Contract Documents based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. All Certificates of Payment must be reviewed by Owner's Designated Representative or Program Manager (if any) before being submitted to the Owner. All Certificates of Payment must be reviewed and approved by the Owner, or, at the Owner's option, by the Owner's Designated Representative or Program Manager (if any).

**§ 4.2.6** The Architect shall reject Work that does not conform to the Construction Documents and Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with the Construction Documents and the Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is conducted for the purpose of determining the general accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, all of which remain the responsibility of the Contractor as required by the Construction Documents and Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.



§ 4.2.8 The Architect, in full cooperation and coordination with the Owner, or, at the Owner's option, by the Owner's Designated Representative or Program Manager (if any), shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation. The Architect, in full cooperation and coordination with the Owner, may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect, in full cooperation and coordination with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and make recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations or recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect shall be final.

§ 4.2.14 The Architect will review and respond to requests for information about the Construction Documents and the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information, at no additional cost to the Owner.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 Subcontractors, Sub-subcontractors and material suppliers shall not contact the Architect or the Owner directly. Any information they might need shall be obtained through the Contractor.

## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within ten (10) calendar days after award of the Contract, shall furnish in writing to the Owner, Owner's Designated Representative or Program Manager (if any), and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The list of subcontractors shall be submitted in duplicate on AIA Document G805, 2001 Edition. The Architect shall reply within fourteen (14) calendar days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner. **The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed.** In the event a subcontractor is replaced, the Owner and Architect shall be given a reasonable time or 14 days, whichever is less, to object to the new subcontractor. Failure of the Owner or Architect to object in a timely manner shall constitute consent to the new subcontractor doing the proposed work.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor or if the Owner requires use of a specific subcontractor, then the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums shall be allowed for failure to so inspect or investigate.

## § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The Contractor is fully responsible for acts and omissions of the Subcontractors and persons employed by them or under their control.

§ 5.3.3 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

§ 5.3.4 The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for any unperformed portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract either in accordance with Article 14 or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing;
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bonds relating to the Contract; and
- .3 the Subcontractor provides bonds as required by law of prime contractors and by Owner

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

#### § 5.5 NOTICE OF SUBCONTRACTOR DEFAULT

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

#### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 Contractor shall cooperate with other separate contractors to ensure that the Work remains on schedule. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement between the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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(Paragraph deleted)

§ 6.1.4 Additional provisions for separate contracts are included in the Specifications.

## § 6.2 CONTRACTOR'S RESPONSIBILITY

§ 6.2.1 The Contractor shall coordinate the scheduling of work performed by any of the Owner's separate contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's separate contractors. The Contractor shall afford the Owner and separate contractors reasonable site access and opportunity for introduction and storage or staging of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's separate contractors.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report in writing to the Architect and Owner discovered discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, and shall promptly report in writing to the Architect and Owner if Owner's separate contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work and is performed in a timely manner, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

§ 6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

§ 6.2.3.3 All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5, as amended.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14, as amended.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the

limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner and Owner's Designated Representative or Program Manager (if any).

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Construction Documents and the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price shall be valid unless so ordered or directed.

**§ 7.1.4** The Contractor shall in no instance commence Work on or provide materials for or make changes in the Work for this Project which will require additional payment from the Owner to the Contractor until the Contractor has requested and obtained in writing either a signed written Change Order or signed written approval from the Architect and Owner's Designated Representative or Program Manager (if any) to proceed with the extra Work. The Change Order or written approval shall not be valid unless signed by a principal of the firm of the Architect's office.

**§ 7.1.5** Failure of the Contractor to obtain a written Change Order or written approval from the Architect and Owner's Designated Representative or Program Manager (if any) before commencing such Work shall constitute cause for rejection of request for additional compensation for such work by the Contractor.

**§ 7.1.6** Each request for approval or additional work which is to require additional payment from the Owner, or in instances whether credit is to be allowed to the Owner for omission of certain work or materials, shall be accompanied by a price quotation, including a complete cost breakdown of materials, labor, overhead and profit.

**§ 7.1.7** The total Contractor mark-up for overhead, profit or fee for work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total Contractor mark-up for overhead, profit or fee for supervision of work performed by subcontractors' forces shall not exceed FIVE PERCENT (5%) of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit or fee for work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed FIFTEEN PERCENT (15%) of the total cost of the Change in the Work plus one hundred twenty five dollars (\$125.00) minimum charge to the Owner for any Change Order requiring an addition to the scope of the Work of the Project, and a fee of ONE PERCENT (1%) for additional bond costs.

**§ 7.1.8** Allowance balances that are not used in connection with the scope to which they are allocated in the GMP Amendment may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

## **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

**§ 7.2.3** Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on the following method:

§ 7.3.3.1 Changes in the work shall be as established in the contract documents. In the event of a Construction Change Directive that constitutes either an addition to or a deletion from the Scope of the Work for project as established at the time of execution of the contract for construction, the following adjustments shall be made:

§ 7.3.3.1.1 Cost of Work: The actual cost as determined by lump sum pricing, provided in detail, and/or unit cost pricing of such additions or deletions to the Scope of the Work shall be added or subtracted from the contract price.

§ 7.3.3.1.2 Adjustments for General Requirements, Supervision and Overhead and Profit: Upon establishment of the Cost of Work of such additions or deletions, the contract price shall be increased for additions and decreased for deletions according to and not to exceed the following;

- .1 To Subcontractor for work performed by their own forces - 10% of the actual cost of the addition or deletion from the work.
- .2 To Subcontractor for work performed by other than their own forces - 5% of the actual cost of the addition or deletion from the work.
- .3 To Subcontractor's Subcontractor/Material supplier for work performed by Subcontractor's Subcontractor/Material supplier's own forces. - 10% of the actual cost of the addition or deletion from the work.
- .4 To Subcontractor's Subcontractor/Material supplier for work performed by other than Subcontractor's Subcontractor/Material supplier's own forces. - 5% of the actual cost of the addition or deletion from the work.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices may, by mutual written agreement, be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work plus the Construction Manager's Fee. Direct costs shall be limited to the following:

- .1 Actual costs of labor, including social security, unemployment insurance, and workers' compensation insurance;
- .2 Actual costs of materials, supplies and equipment, including cost of transportation, used in performing the Change in the Work;
- .3 Actual rental costs of machinery and equipment rented from third parties, exclusive of hand tools; and
- .4 Actual costs of premiums for all bonds and insurance, and permit fees, related to the Work.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect.

**§ 7.3.9** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

*(Paragraph deleted)*

#### **§ 7.4 MINOR CHANGES IN THE WORK**

**§ 7.4.1** With prior written notice to the Owner's representative the Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the Construction Documents and the Contract Documents, subject to approval by the Owner. Such changes will be effected by written order signed by the Architect in the form of an Architect's Supplemental Instruction (ASI), and shall become binding as a part of the Contract Documents. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

**§ 7.4.2** Allowance balances that are not used in connection with the scope to which they are allocated in the GMP Amendment may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

**§ 8.1.2** The date of commencement of the Work is the first business day after Contractor's written Notice to Proceed. The Notice to Proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by Owner's Board of Education, signed by the Owner's authorized representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance, in compliance with Article 11. Issuance of the notice to proceed shall not relieve the Contractor of his responsibility to comply with Article 11.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect, and agreed to by Owner, in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.

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

#### **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits and bench mark dates, including dates for Substantial Completion and Final Completion of the Project stated in the Contract Documents and the critical path schedule for the Project prepared by the Contractor and approved by the Owner, Appendix "A" attached hereto, are of the essence of the Contract. By executing the Agreement the Contractor stipulates that the Contract Time is a reasonable period for performing the Work.

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**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, or prior to approval of Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Contract. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time. The Contractor must maintain at the Site, available to the Owner and Architect, a copy of the most recently approved Project Schedule. If the Contractor's progress is not maintained in accordance with the most recently approved Project Schedule, the Contractor shall promptly provide a reasonable recovery schedule to correct the delays and bring the progress of the Work back into accordance with the most recently approved Project Schedule, at no cost to the Owner.

**§ 8.2.4** The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion.

**§ 8.2.5** The Contractor shall maintain at the Site, available to the Owner, Owner's Designated Representative or Program Manager (if any) and Architect, a copy of the most recently approved Project Schedule. If the Contractor's progress is not maintained in accordance with the most recently approved Project Schedule, the Contractor shall promptly provide a reasonable recovery schedule to correct the delays and bring the progress of the Work back into accordance with the most recently approved Project Schedule, at no cost to the Owner.

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

#### **§ 8.3.1 DATE OF COMMENCEMENT AND TIME OF COMPLETION**

Contractor agrees that it will begin work immediately upon receipt of notice to proceed from the Owner, and that it will diligently proceed with said Work such that the same shall be completed within the time frame stated in the bid documents.

#### **§ 8.3.2 BEST EFFORTS**

The Contractor acknowledges that the services to be performed are essential to the effective operation of the Owner and that, therefore, the Contractor will exercise its best efforts to complete the services called for under this Agreement in the minimum time possible and within the time specified in such Work orders as may be issued by the Owner to the Contractor. In the event that the Contractor for good cause shown cannot complete the services for a particular task or phase within the time agreed to, the Contractor shall make a written request to the Owner in accordance with Section 8.3.4 below.

#### **§ 8.3.3 NOTICE OF CONDITIONS CAUSING DELAY**

**§ 8.3.3.1** Within five (5) working days after the commencement of any condition which is causing or may cause delay in completion, the Contractor must notify the Owner in writing of the effect, if any, of such condition upon the time progress schedule and must state why and in what respects, if any, the condition is causing or may cause such delay, along with any proposed adjustments to the most recently approved Project Schedule.

**§ 8.3.3.2** Failure to strictly comply with this requirement may, in the discretion of the Owner, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

#### **§ 8.3.4 EXTENSION OF TIME**

**§ 8.3.4.1** Any extension or extension of time for the completion of the Work may be granted by the Owner subject to the provisions of this section, but only upon written application therefor by the Contractor to the Owner.

**§ 8.3.4.2** An application for an extension of time must set forth in detail the source and nature of each alleged cause of delay in the completion of the Work, the date upon which each such cause of delay began, ended, or will end, and the number of days' delay attributable to each of such causes. It must be submitted prior to completion of the Work.

**§ 8.3.4.3** If such an application is made, the Contractor shall be entitled to an extension of time for delay and completion of the Work caused solely: (1) by the acts or omissions of the Owner, its officers, agents, or employees; (2)

by the acts or omissions of the Architect, its officers, agents, or employees; (3) by the acts or omissions of a separate contractor employed by the Owner; (4) by changes ordered in the Work; (5) by fire, governmental actions, unusual delay in deliveries, unavoidable and unforeseeable supervening casualties, or other causes beyond the Contractor's control; (6) by delay authorized in writing by the Owner.

**§ 8.3.4.4** The Contractor shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the Owner may determine to result solely from such causes, and then only if the Owner may determine to result solely from such causes, and then only if the Contractor shall have strictly complied with all the requirements of this section. The Owner shall make such determination within thirty (30) calendar days after receipt of the Contractor's application for an extension of time; provided, however, said application complies with the requirements of this Section.

**§ 8.3.4.5** The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently but, if at all, only for the actual period of delay in completion of the Work as determined by the Owner, regardless of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of the Contractor or of its Subcontractor, if any, and would of itself (regardless of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault, or omission.

**§ 8.3.4.6** The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Owner. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the Owner or any of its rights under the Contract Documents. Additionally, the Contractor shall not recover any additional compensation for any additional expense caused by such delay or delays.

### **§ 8.3.5 DELAY CLAIMS**

Contractor represents and warrants that the provisions herein contained for extension of time are fair and adequate and that Contractor has had an opportunity to make provision for any and all delays within the contemplation of the parties. Accordingly, it is understood and agreed that Contractor shall not have or assert any claim for damages or prosecute any suit, action, cause of action, arbitration claim, or other proceeding against the Owner for such damages arising from any delay or hindrance in the completion of the Work called for in this Agreement caused by an act or omission on the part of the Owner, their agents, servants, employees or otherwise. Contractor agrees that the only possible compensation for any delay is an extension of time and payment of reimbursable expenses incurred for the Project previously approved by the Owner.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. In the event that the Project is a Construction Management at Risk Project, then any use of the term "Contract Sum" in the Contract Documents shall be interpreted to mean "Guaranteed Maximum Price".

### **§ 9.2 SCHEDULE OF VALUES**

*(Paragraph deleted)*

**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment or in the case of a Guaranteed Maximum Price, within fifteen (15) calendar days after establishing the Guaranteed Maximum Price, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect, Owner's Designated Representative or Program Manager (if any), or Owner may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702Cmc and G703 shall be used.

**§ 9.2.2** In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA

Documents G702 and G703, and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable), bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

### § 9.3 APPLICATIONS FOR PAYMENT

**§ 9.3.1** Each Application for Payment to Contractors shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents, which schedule of values shall be updated from time to time as Contracts are awarded or as the Owner determines necessary. The schedule of values shall allocate the entire Cost of the Work among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Application for Payment of the Subcontractors.

*(Paragraphs deleted)*

**§ 9.3.2** Applications for Payment to Contractors shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 calculating (a) the expense which has actually been incurred by each Subcontractor and/or supplier on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment, divided by (b) the share of the Project budget allocated to that portion of the Work in the schedule of values. The Contractor shall also include a spreadsheet showing the budget verses billed-to-date totals for each of the standard CSI classifications.

**§ 9.3.3** Payments to Contractors shall be subject to retention of not less than ten percent (10%) of the first fifty percent (50%) of the subcontract work, and not less than five percent (5%) for the last fifty percent (50%) of the subcontract work. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

**§ 9.3.4** Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet to the Architect, Owner's Designated Representative or Program Manager (if any). All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

**§ 9.3.5** By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that the Payment Application includes only Work self performed by Contractor or for which Contractor has been invoiced. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may justify termination of Contractor's Contract with Owner.

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**§ 9.3.6** The Owner may approve payment for materials and equipment stored off the site under the following conditions: The Contractor shall furnish and maintain a suitable storage site and proper storage conditions which must be approved in advance by the Owner. Equipment and materials covered by an Application for Payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft and other hazards as the material may require. All protection must be provided by the Contractor at its own expense and must be maintained throughout the storage period. Materials and equipment must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled, "PROPERTY OF SPRINGFIELD-PLATTEVIEW COMMUNITY SCHOOLS" with Project name. Materials and equipment stored at the site must be stored so that they may be readily inspected, measured, and counted, at all times, by the Owner's representatives. Application for Payment for materials and equipment stored off the site must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS. The bill of sale must be accompanied by an inventory of stored materials or equipment, together with a description of the storage site by street number and city, or by a legal description of the premises. The Contractor agrees that in accepting payment for the materials or equipment stored off the site, it is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with Plans and Specifications. The Contractor further agrees that acceptance by the Owner of a bill of sale for stored materials or equipment does not imply acceptance of the same for the purposes of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance thereof by the Owner. PROVIDED THE CONTRACTOR HAS BEEN PAID ALL AMOUNTS CERTIFIED BY ARCHITECT AND NOT REASONABLY IN DISPUTE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER FROM AND AGAINST ALL CLAIMS, ACTIONS, LOSSES, COSTS, DAMAGES, EXPENSES, LIABILITIES AND OBLIGATIONS, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES, RESULTING FROM (1) THE ASSERTION OR FILING OF ANY CLAIM FOR AMOUNTS ALLEGED TO BE DUE TO THE CLAIMANT FOR LABOR, SERVICES, MATERIALS, SUPPLIES, MACHINERY, FIXTURES OR EQUIPMENT FURNISHED IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, (2) ANY OTHER LEGAL PROCEEDINGS INITIATED IN CONNECTION WITH THAT CLAIM.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven (7) calendar days after receipt of the Contractor's Application for Payment, return the Payment Application to the Contractor as provided in Section 9.3.4; certify, sign and issue to the Contractor a Certificate of Payment for such amount as the Architect determines is properly due, or notify the Contractor in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, that the Architect has observed the progress of the Work; determined that the Work has progressed to the point indicated in the Architect's professional opinion determined that the quality of the Work is in accordance with the Construction Documents and the Contract Documents; and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents and the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Construction Documents and the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment in writing to the Owner will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

**§ 9.4.3** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) calendar days if Owner disputes the Architect's Certificate for Payment or Contractor's Payment Application, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents.

§ 9.6.1.1 Notwithstanding the above, the Owner shall retain full rights to perform its own review of each Application for Payment received from the Contractor, and may request additional clarification, information, or supporting documentation from the Contractor to support the amounts listed on any Application for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than ten (10) calendar days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The Contractor shall, within ten (10) calendar days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) calendar days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor. Action on the part of the Owner to require Contractor to pay a Subcontractor shall not impose any liability on Owner.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor.

§ 9.6.8 Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor provided the Subcontractors and materialmen are performing their work to the satisfaction of Contractor and in a manner consistent with their contracts.

## § 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Owner does not pay the Contractor any payments certified by the Architect, which is undisputed, due and owing, within thirty (30) calendar days after the date of a Certificate for Payment, then the Contractor, upon ten (10) additional calendar days' written notice to the Owner and the Architect stating that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that 1) payment has been made, or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents or the Construction Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate the Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between the Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Architect does not issue a Certificate for Payment within seven (7) calendar days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) calendar days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional calendar days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Architect has determined that the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and Construction Documents so the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place; substantial completion of all punch list items to be performed by Subcontractors. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal operations or other intended use or prevent the Owner from performing its preparatory tasks for opening the building, provided, however, as a condition precedent to Substantial Completion, the Owner has received from Contractor (for which Contractor is responsible to provide) all certificates of occupancy and other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for beneficial occupancy of the Project. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within thirty (30) calendar days. Contractor shall complete Owner's Substantial Completion Certificate.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner's Designated Representative or Program Manager (if any) a comprehensive list of items to be completed or corrected prior to final payment (i.e. "punch list"). Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents and the Construction Documents.

§ 9.8.3 Upon receipt of the Contractor's punch list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's and Architect's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Construction Documents or the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than five inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare, sign and issue Owner's Certificate of Final Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy and use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may commence whether or not the portion is substantially complete.

§ 9.9.2 In the event of Partial Occupancy, the Contractor shall promptly secure endorsement from its insurance carrier(s), consent from its surety(ies), if any, and shall apply to the appropriate public authorities that have jurisdiction over the Work to permit Partial Occupancy.

§ 9.9.3 In the event of Partial Occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such building services as heating,



ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. In the event of Partial Occupancy prior to Substantial Completion, provided the Contractor has met all Milestone Dates set forth in the Contract for Construction, mutually acceptable arrangements shall be made between the Owner and the Contractor with respect to the operation and cost of necessary security, maintenance, and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Owner shall assume proportionate and reasonable responsibility for the cost of the above services reduced by any savings to the Contractor for such services realized by reason of Partial Occupancy. Further, mutually acceptable arrangements made between the Owner and the Contractor with respect to such matters shall not be unreasonably withheld, delayed, or conditioned.

**§ 9.9.4** In each instance, when the Owner elects to exercise its right of Partial Occupancy, as described herein, the Owner will give the Contractor and Architect advance written notice of its election to take the portion or portions involved, and immediately prior to Partial Occupancy, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the Work.

**§ 9.9.5** Partial Occupancy, or use of a portion or portions of the Work, or installation of furnishings and equipment shall not: (1) constitute evidence of Substantial Completion or Final Completion; (2) constitute acceptance of any Work or portions of any Work; (3) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in or malfunctioning of any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents; or (4) commence any warranty period under the Contract Documents, provided that the Contractor shall not be liable for ordinary wear and tear resulting from such Partial Occupancy.

**§ 9.9.6** Subject to the terms and conditions provided herein, if Contractor claims that delay or additional cost is involved because of Partial Occupancy by Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents.

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly prepare, sign and make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue Owner's Certificate of Final Completion and a final Certificate for Payment certifying to the Owner that on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and Construction Documents and that the entire balance, including all retainages found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final payment shall be made by the Owner in accordance with Owner's regular schedule for payments.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) using AIA Document G706 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) evidence satisfactory to Owner that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) using AIA Document G707 consent of surety, if any, to final payment, and (5) except for amounts currently withheld by Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A; notarized subcontractor's liens release; and (6) receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Before final payment can be made, Department of Labor Division of Employment Form

No. 16, Certificate of Contribution Status, must be received from the State of Nebraska Department of Labor certifying that the Contractor and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the date of Substantial Completion. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- § 9.10.2.1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- § 9.10.2.2 A release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- § 9.10.2.3 A certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- § 9.10.2.4 A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- § 9.10.2.5 Consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- § 9.10.2.6 Other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- § 9.10.2.7 A as-built site plan in the form and number required by the Contract Documents;
- § 9.10.2.8 All warranties and bonds required by the Contract Documents; and,
- § 9.10.2.9 Record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner. The "as-built" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) calendar days after Owner's Board of Education has voted to accept the Work and approve Final Payment.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, and it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall  
(Paragraphs deleted)  
not constitute a waiver of any Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

## § 9.11 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY BOARD OF EDUCATION

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§ 9.11.1 Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of the Board of Education of the SPRINGFIELD-PLATTEVIEW COMMUNITY SCHOOLS for the purpose of payment of the Contract Sum or any part thereof. See Article 14 for termination and fees upon termination.

§ 9.11.2 It is agreed that the obligations of the Contractor herein are expressly contingent upon reasonable proof to the Contractor that the Owner has funds specifically approved by formal action of the Board of Education of the SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS for the purpose of payment of the Contract Sum or any part thereof.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC § 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards. This requirement applies continuously twenty-four (24) hours per day during the Construction Phase of the Project. Additionally, the Contractor shall comply with all safety standards and directives of the Owner's risk management consultants, including the consultants under any Owner Controlled Wrap-Up Insurance Program.

§ 10.1.2 The Contractor expressly agrees that as between Owner and Contractor, it is in charge of and in control of the Work and that it shall have sole exclusive responsibility to assure the safety of the Work. Neither the Owner nor the Architect is in charge of the Work or in control of the execution of the Work. The obligation of the Contractor under this Section 10.1.2 shall be construed to include, but not be limited to, injury or damage because the Contractor, its agents, and employees failed to use or misused any scaffold, hoist, crane, stay, ladder, support, or other mechanical contrivance erected or constructed by any person, or any or all other kinds or equipment, whether or not owned or furnished by the Contractor. The Contractor expressly agrees that it is exclusively responsible for compliance with OSHA and local regulations for construction and that it is the employer within the meaning of those regulations. Any provision in the Contract Documents in conflict with this Section shall be null and void. It is the express intent of the parties that this provision be given broad and liberal construction to effectuate the intent of the parties that the Contractor, and not the Architect or Owner, is in charge of the Work.

§ 10.1.3 The Contractor shall be required in compliance with the Asbestos Hazard Emergency Response Act of 1996 to certify that all products and materials supplied as part of this Project shall be free of asbestos.

§ 10.1.4 The Contractor shall be required to submit to the Owner, with a copy to the Architect and Contractor, written certificates from all known suppliers and Subcontractors that all materials and equipment used in the potable water system are lead free and that formaldehyde levels of all materials do not exceed acceptable levels established by H.U.D.

§ 10.1.5 Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

§ 10.1.6 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving

such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

**§ 10.1.7** Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and Contractor agrees that Contractor's representatives, employees, agents, and sub-contractors will abide by same.

## **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work, school personnel, students, and other persons on Owner's premises and other persons who may be affected thereby including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as other buildings, and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. More specifically, the Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons, public utility companies, owners of the property having structures or improvements in proximity to the site of the Work, and persons in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operations in order to provide them with time to remove any obstruction for which they are responsible and to take action to properly protect their property.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable full protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

**§ 10.2.4** The Contractor shall exercise the utmost care so as not to endanger life or property in the prosecution of the Work. If the Contractor is negligent, the Contractor will be responsible for any and all damages, claims and of the defense of all actions against Owner and Architect resulting from the failure to exercise such care. Explosives shall not be employed in the prosecution of the Work.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of the Contractor are in addition to the obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

*(Paragraphs deleted)*

§ 10.2.8 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.

§ 10.2.9 Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

§ 10.2.10 The Contractor shall promptly report to the Architect and Owner or their designated representatives in writing all accidents arising out of or in connection with the Work that caused death, personal injury or property damage. This report shall give full details, including statements of witnesses, hospital reports and other information in the possession of the Contractor. In addition, in the event of any serious injury or damage, the Contractor shall immediately notify the Owner and Architect by telephone of such accident.

§ 10.2.11 The duty of the Architect to conduct construction review of the Contractor's performance does not include review of the adequacy of the Contractor's safety measures in, on, or near construction sites.

§ 10.2.12 Utilities or other services indicated to be abandoned shall be maintained in service as required until new facilities are provided, tested and ready for use. The Contractor shall schedule Work so that it does not necessitate long periods of shut-down of existing facilities and these shut-downs shall be coordinated with the Owner.

§ 10.2.13 All improvements on or about the site and adjacent property which are not to be altered, removed or otherwise changed shall be returned to the conditions which existed prior to initiation of the Work.

### § 10.3 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) calendar days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

*(Paragraphs deleted)*

### § 10.4

*(Paragraphs deleted)*

### HAZARDOUS MATERIALS

§ 10.4.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), mercury, or lead, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. If Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 10.4.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written

agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Guaranteed Maximum Price, Date of Substantial Completion and/or Final Completion.

**§ 10.4.3** UNLESS DIRECTED BY THE OWNER, IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, BOARD OF EDUCATION, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

**§ 10.4.4** The Owner shall not be responsible under this Section 10.4 for materials or substances the Contractor brings to the site. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.4.5** IF THE CONTRACTOR FAILS OR NEGLECTS TO IDENTIFY ANY HAZARDOUS MATERIALS OR SUBSTANCES AT THE PROJECT SITE, FAILS OR NEGLECTS TO GIVE WRITTEN NOTICE OF THE EXISTENCE OF HAZARDOUS MATERIALS OR SUBSTANCES AT THE PROJECT SITE TO THE OWNER AND ARCHITECT, OR FAILS OR NEGLECTS TO PROPERLY RENDER THE HAZARDOUS MATERIALS OR SUBSTANCES HARMLESS, THEN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S BOARD OF EDUCATION, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR SUBSTANCES; PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF TO THE EXTENT THE WORK IS NOT COVERED BY BUILDERS RISK INSURANCE PROCEEDS) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF NEBRASKA.

## **§ 10.5 EMERGENCIES**

**§ 10.5.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall promptly notify the Owner and Architect in writing within twenty-four (24) hours of any such emergency event. The Contractor shall promptly notify the Owner and Architect in writing within twenty-four (24) hours of any such emergency event.

**§ 10.5.2** The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

## **§ 10.6 [omit]**

## **§ 10.7 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM**

**§ 10.7.1** Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".



**§ 10.7.2** The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

#### **§ 10.8 HAZARDOUS MATERIALS CERTIFICATION**

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

#### **ARTICLE 11 INSURANCE AND BONDS**

**§ 11.0.1** No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Education. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Education. Said lack of insurance may then be grounds for termination or modification of this Agreement.

**§ 11.0.2** Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five (5) business days after execution of the Contract by Owner. Satisfactory evidence shall include a duly-executed ACORD Form 25-S Certificate of Insurance naming Owner as a certificate holder with the following modifications in the "Cancellation" Section: delete (line through) the words "endeavor to"; place the number "30" in the blank; and delete the words "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives".

**§ 11.0.3** All insurance required herein shall be obtained from a company licensed to do business in the State of Nebraska by the Nebraska Department of Insurance, and shall be underwritten by a company rated not less than A VII in A.M. Best's Key Rating Guide, Property-Casualty and that permits waivers of subrogation.

**§ 11.0.4** All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's Worker's Compensation and Professional Liability insurance.

**§ 11.0.5** All insurance required herein shall be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.0.6** [omit]

**§ 11.0.7** All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

**§ 11.0.8** Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

## § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims which may arise out of, or result from, the Contractor's operations under the Contract whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including the following:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.3.1 and 11.1.2.4);
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18.

## § 11.1.2 COVERAGES PER OCCURRENCE AND CERTIFICATES OF INSURANCE

§ 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

§ 11.1.2.2 Certificates of insurance acceptable to the Owner and Architect shall be filed by the Contractor with the Owner and Architect prior to commencement of the Contractor's Work. These certificates required by this Article 11 shall contain a provision that coverages afforded under the policies and endorsements will not be canceled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate of insurance evidencing continuation of such coverage shall be submitted with the final Application for Payment as required in Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to the Owner and Architect in writing within seven (7) calendar days of Contractor's first notice of the same.

§ 11.1.2.3 The Contractor shall cause the commercial liability coverage, excess liability and automobile liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.2.4 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§ 11.1.2.5 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ 11.1.2.6 The Contractor shall require Subcontractors to provide applicable Workers' Compensation, General Liability, and Auto Liability coverages at the Subcontractors' own expense. Such coverages shall include the Owner as an additional insured and shall provide appropriate waivers of subrogation.

§ 11.1.2.7 The Contractor and its Subcontractors shall comply with all policy conditions of the insurance policies obtained pursuant to Section 11.1.1.



#### § 11.1.2.8 NEBRASKA WORKERS' COMPENSATION INSURANCE

§ 11.1.2.8.1 A copy of a certificate of insurance or a certificate of authority to self insure issued by the Nebraska Department of Insurance showing statutory workers' compensation insurance coverage for the Contractor's employees providing services on a Project is required for the duration of the Project.

§ 11.1.2.8.2 Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

§ 11.1.2.8.3 Persons providing services on the Project include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

§ 11.1.2.8.4 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ 11.1.2.8.5 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts which meets the statutory requirements of Nebraska law for all employees of the Contractor providing services on the Project for the duration of the Project.

§ 11.1.2.8.6 The Contractor must provide a certificate of coverage to the Owner within seven (7) calendar days after being awarded the Contract.

§ 11.1.2.8.7 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 11.1.2.8.8 The Contractor shall obtain from each person providing services on the Project, and provide to the Owner:

- .1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven (7) calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ 11.1.2.8.9 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within fourteen (14) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ 11.1.2.8.10 The Contractor shall contractually require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts, which meets statutory requirements for all of its employees providing services on the Project for the duration of the Project;
- .2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- .3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4 Obtain from each other person with whom it contracts, and provide to the Contractor:
  - .1 A certificate of coverage, prior to the other person beginning work on the Project; and

- .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 Notify the Owner in writing by certified mail or personal delivery, within fourteen (14) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

**§ 11.1.2.8.11** By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project and that the coverage will be based on proper reporting of classification codes and payroll amounts.

**§ 11.1.2.8.12** The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within fourteen (14) calendar days after receipt of notice of breach from the Owner.

### **§ 11.1.3 LEVEL OF INSURANCE**

*(Paragraph deleted)*

#### **§ 11.1.3.1 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

Workers' Compensation:	Nebraska Statutory Limit	
Employer's Liability:	Annual Limits Per Insured (minimum)	
	Construction Manager	Contractor
Bodily Injury by Accident:	\$1,000,000	\$500,000
Bodily Injury by Disease - policy limit:	\$1,000,000	\$500,000
Bodily Injury by Disease - each employee:	\$1,000,000	\$500,000

Each contractor and each subcontractor shall provide a blanket waiver of subrogation.

- .1 Contractor and each Subcontractor issued a separate policy.

#### **§ 11.1.3.2 AUTOMOBILE LIABILITY**

Combined single limit of \$1,000,000 per occurrence.

#### **§ 11.1.3.3 COMMERCIAL GENERAL LIABILITY**

	Annual Limits of Liability (minimum)	
	Construction Manager	Contractor
General Aggregate:	\$5,000,000	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000	\$2,000,000
Personal/Advertising Injury Aggregate:	\$2,000,000	\$2,000,000
Each Occurrence Limit:	\$1,000,000	\$1,000,000

- .1 Occurrence form
- .2 Deductible to Contractor and Subcontractor for property damage claims not to exceed \$5,000 per occurrence, provided that the level of deductible may be increased upon evidence of financial responsibility.
- .3 Coverage extensions to include:
  - The Contractor shall maintain completed operations coverage for three (3) years following issuance of the certificate of substantial completion for the Project.
  - Blanket waiver of subrogation
  - Blanket additional insured
- .4 Excludes: Asbestos, Nuclear Energy, Engineers/Architect's E&O

#### § 11.1.3.4 EXCESS LIABILITY

Each Occurrence:	\$2,000,000 (minimum)
Annual Aggregate (Construction Manager):	\$10,000,000 (minimum)
Annual Aggregate (Contractor):	\$8,000,000 (minimum)

- .1 Occurrence form
- .2 Coverage extensions to include:
  - The Contractor shall maintain completed operations coverage for three (3) years following issuance of the certificate of substantial completion for the Project
  - Blanket additional insured
- .3 Excludes: Asbestos, Nuclear Energy, Engineers/Architect's E&O

#### § 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.2.2 The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date on which Owner begins to occupy or use any completed or partially-completed portions of the Work. If Owner occupies or uses any completed or partially-completed portion of the Work on any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work, pursuant to Sections 9.9.1 and 11.4.4. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, Contractor's builder's risk shall be primary.

§ 11.2.3 Architect shall be responsible for purchasing and maintaining the Architect's liability and worker's compensation insurance as provided in the AIA Document B 104-2007, as revised.

#### § 11.3 PROPERTY INSURANCE

##### § 11.3.1 BUILDER'S RISK INSURANCE

Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Nebraska, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsehood, testing and startup, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and testing of all electrical and mechanical apparatuses and associated equipment, and "soft costs". Such builder's risk insurance shall also include transit coverages for materials to be incorporated into the Project, as well as temporary off-site storage locations. Sub-limits may apply with respect to transit and off-site coverages.

§ 11.3.1.2 If the Owner does not purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Owner, the Contractor, and any Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 Contractor shall be responsible for payment of the property insurance deductible, if any, in the event of an insured loss arising out of Contractor's Work. If the Owner or insurer increases the required minimum deductibles

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above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

**§ 11.3.1.4** Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

**§ 11.3.1.5** The insurance required by this Section 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Section 11.3.6.

**§ 11.3.1.6** Insurance provided by the Owner in favor of the Contractor and Subcontractors as described in this Section § 11.3 shall not extend to vendors or suppliers of the Contractors or Subcontractors not performing work at the Project Site.

### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner and include boiler and equipment breakdown coverage along with hot and cold testing coverage; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) calendar days' prior written notice has been given to the Contractor.

### **§ 11.3.6 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The foregoing waiver afforded the Architect, his/her agents, and employees shall not extend to the liability imposed by Section 3.18.3. The Contractor shall require the Contractor's subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 11.3.6. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Contractor shall be responsible for payment of the deductible, if any, in the event of an insured loss caused by or arising out of Contractor's Work. Notwithstanding any other provision to the contrary in this Section 11.3.6, this waiver of subrogation shall apply only to the extent of actual recovery of any insurance proceeds under such policies (or recoverable proceeds if Owner or Contractor fails or refuses to recover such proceeds).

### **§ 11.3.7 ADJUSTMENT OF LOSS**

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A loss insured under the Owner's builder's risk insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.9. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.8** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.9** Partial occupancy or use shall not commence until the insurance company or companies providing this property insurance have consented to such partial occupancy or use in writing by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain such consent of the insurance company or companies and shall take no action without written mutual consent that would cause cancellation, lapse or reduction of this insurance.

*(Paragraph deleted)*

#### **§ 11.4 PERFORMANCE AND PAYMENT BOND**

**§ 11.4.1** The Contractor shall, as required by Neb. Rev. Stat. § 52-118, furnish separate payment bonds, as necessary, and bonds covering faithful performance of the Contract and payment of obligations arising thereunder with minimum Best Rating "A". Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Expenses to be Reimbursed. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

**§ 11.4.2** The Contractor shall deliver the required bonds to the Owner not later than five (5) business days after execution of the Contract by the Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

**§ 11.4.3** All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

**§ 11.4.4** Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Nebraska. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.1.1** The Contractor shall promptly correct Work rejected by the Architect or Work failing to conform to the requirements of the Contract Documents or Construction Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.1.2** The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

### **§ 12.2.2 AFTER FINAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5 and as a material term of the contract between the Owner and the Contractor, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Construction Documents or the Contract Documents, the Contractor shall correct it promptly without additional cost to the Owner after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct the Work as provided in Section 12.2.2.1.1.

**§ 12.2.2.1.1** Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents or Construction Documents, including any warranty obligations, expressed or implied, or periods of limitation and repose. THE CONTRACTUAL ONE YEAR PERIOD FOR CORRECTION OF THE WORK IS IN ADDITION TO ALL WARRANTY OBLIGATIONS OF THE CONTRACTOR AND SHALL NOT BE APPLIED TO LIMIT ANY APPLICABLE STATUTORY PERIOD OF LIMITATION OR REPOSE. ALL WARRANTIES SHALL COMMENCE NO EARLIER THAN THE SUBSTANTIAL COMPLETION DATE OF EACH PROJECT.

**§ 12.2.2.1.2** If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) business days after written notice, then Owner may, upon ten (10) additional business days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

**§ 12.2.2.2** The contractual one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The contractual one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to that corrected Work.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.



**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 12.2.6** Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

**§ 12.2.7** The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision for this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

**§ 12.2.8** If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Construction Documents or the Contract Documents, then an equitable deduction from the Contract Sum or Guaranteed Maximum Price shall be made by agreement between Contractor and Owner.

Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the laws of the State of Nebraska, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Sarpy County, or, if no county is specified, then the county in which the Owner's main administrative office is located.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

### **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving

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notice. Notice may also be made by facsimile transmission to the last business number known to the party giving notice. In such case, notice will be deemed received upon electronic confirmation of receipt. The party making such facsimile transmission shall also forward a copy of such notice by regular mail. Each party to the Contract shall provide all other parties with the facsimile telephone number to which all official notices should be sent.

#### **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

#### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals which shall be included in the Cost of the Work. Provided, however, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

**§ 13.5.1.1** Special Inspection and Special Testing in addition to the test and inspections required of the Contractor: The Owner will employ Special Inspector(s) as required by the "2006 International Building Code". The Contractor shall be responsible for coordinating, notifying, and scheduling all special inspections and special testing in order to maintain the progress of the work. The Contractor shall give the Architect and Owner timely notice of when and where special inspections and special tests are to be made so that the Architect may be present for such procedures. The Owner shall bear the costs of any special inspections and special testing performed under this subsection 13.5.1.1. The Contractor shall schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, then the Owner shall provide or contract for such additional testing, inspection or approval. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect with a copy to the Owner.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **§ 13.6 INTEREST**

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as provided by Neb. Rev. Stat. § 81-2404. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment for the Architect, if Owner's

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Board of Education meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Education meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

### **§ 13.7 TIME LIMITS ON LITIGATION**

The Owner and Contractor shall commence all litigation, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the dispute resolution method selected in the Agreement and within the time period specified by applicable law, but in any case not more than ten (10) years after the date of Final Completion of the Work.

### **§ 13.8 EQUAL OPPORTUNITY IN EMPLOYMENT**

**§ 13.8.1** The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

**§ 13.8.2** The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status.

### **§ 13.9 CONTRIBUTIONS UNDER NEBRASKA EMPLOYMENT SECURITY LAW**

The Contractor and all Subcontractors engaged to perform any part of the Work shall make payment to the Unemployment Compensation Fund of the State of Nebraska all contributions and interest due under the provisions of the Employment Security Law, Neb. Rev. Stat. §§ 48-601, et seq. (Reissue 1988), as amended, on wages paid to individuals employed in the performance of the Contract; and before final payment shall be made of the final three percent (3%) of this Contract, the Contractor shall secure and file with the Owner, and cause any Subcontractor to secure and file with the Owner, written clearance from the Commissioner of the Department of Labor of the State of Nebraska, certifying that all payments then due of contributions or interest which may have arisen under this Contract have been made by the Contractor or any Subcontractor to the Unemployment Compensation Fund.

### **§ 13.10 STORAGE AND DISPOSAL OF HAZARDOUS WASTE**

Fines, penalties and any other action ordered by the U.S. Environmental Protection Agency or Nebraska Department of Environmental Quality arising from the performance of the Work, but excluding preexisting site conditions, are the responsibility of the Contractor and shall not be recoverable from the Owner in any fashion.

### **§ 13.11 WARRANTY OF EXAMINATION OF CONSTRUCTION DOCUMENTS**

By signing this Agreement the Contractor does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each Contractor performing the Work shall also agree, certify, warrant and represent to the Owner that their bids have been based on a full and complete examination of the Contract Documents and Construction Documents, including as determined necessary site examination; and that all statements, facts and representations made in all submittal documents and materials are true, correct, accurate, and complete, and may be relied upon by the Owner in considering the firm's bid. The Contractor understands it is its responsibility to immediately provide updated and correct information if any of the information changes at any time. Any omission, falsification or misrepresentation made by the Contractor or a Subcontractor in such documents and materials or any supplement thereto, will be sufficient grounds for failure to employ the Contractor or terminate any contract with the Owner. The Contractor and any Subcontractor by entering into an Agreement with the Owner consents and agrees to comply at all times with all Owner policies, regulations, directives, and practices.

### **§ 13.12 VERIFICATION OF IMMIGRATION STATUS**

The Contractor agrees to use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal

agency authorized to verify the work eligibility status of a newly hired employee. This requirement applies to all Subcontractors of the Contractor. The Contractor shall, by written agreement, require compliance with the federal immigration verification system by all Subcontractors. If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

### **§ 13.13 RECORDS**

**§ 13.13.1** Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within fourteen (14) calendar days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

**§ 13.13.2** If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.14.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

**§ 13.13.3** Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.14.1.

**§ 13.13.4** Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.14.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

**§ 13.13.5** In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

### **§ 13.14 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION**

**§ 13.14.1** Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

**§ 13.14.2** Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

**§ 13.14.3** The parties acknowledge that, as a political subdivision of the State of Nebraska, Owner is subject to, and must comply with, the provisions of the Nebraska Records Management Act.



## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive calendar days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not made payment of disputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 calendar days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists then, after the applicable time period, the Contractor may, upon twenty (20) calendar days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of ninety (90) consecutive calendar days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon twenty (20) additional calendar days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Section 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, subject to any prior rights of the surety, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) calendar days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts earned to the date of termination.

**§ 14.2.4** If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

**§ 14.2.5** The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within fourteen (14) calendar days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Sections 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

**§ 14.2.6** If the Contractor is declared by the Owner to be in default under the Contract, then the Contractor's Performance Bond Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time may be adjusted, by mutual agreement for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Education has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and



- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

**§ 14.4.4** Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

## **ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

A Claim is a written demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of the Contract terms, extension of time, or other relief with respect to the terms of the Contract, the Project or the Work. The responsibility to substantiate Claims shall rest with the Contractor.

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by the Contractor must be initiated by written notice to the Owner and to the Architect. Claims by Contractor must be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim or within twenty-one (21) calendar days after the Contractor first knew of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) calendar days after the occurrence of the event giving rise to such claim or within ninety (90) calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Contractor agrees that this is a reasonable notice requirement under Nebraska law.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7, as amended, and Article 14, as amended, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM**

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum, written notice as provided herein shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.5. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Education, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 Extensions of time will not be granted for delays caused by inadequate construction force, or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed.

§ 15.1.5.3 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal and unusually severe for the period of time, could not have been reasonably anticipated and prevented the execution of major items of work on normal working days.

§ 15.1.5.4 Time extensions for abnormal / unusually severe weather. The procedure for determination of time extensions for unusually severe weather is set forth in this Section.

§ 15.1.5.4.1 Adverse weather means atmospheric conditions at the Project location and at a definite time that are unfavorable to construction activities. For purposes of this Section, adverse weather includes one or more of the following atmospheric conditions:

- .1 Precipitation at the Project location during the 24-hour period constituting a work day in a total, cumulative amount in excess of one-half (0.5) inch of rainfall or the equivalent of one-half (0.5) inch of rainfall if precipitation is other than rainfall;
- .2 Outside temperatures at the Project location during the work hours of the work day remain below 32° F for at least 4 consecutive hours and which impact Contractor's scheduled outside work for that work day; or
- .3 Sustained winds at the Project location during the work hours of the work day remain above 25 m.p.h. for at least 4 consecutive hours and which impact Contractor's scheduled outside work for that work day.

§ 15.1.5.4.2 Adverse weather also may include "dry-out" days, if appropriate, subject to the following conditions:

- .1 There is precipitation at the Project location during the 72-hour period immediately preceding the anticipated "dry-out" work day in a total cumulative amount in excess of one (1.0) inch of rainfall or the equivalent of one (1.0) inch of rainfall if precipitation is other than rainfall; and
- .2 Exterior site conditions as a result of the prior precipitation at the Project location are anticipated to detrimentally impact site access or site work and the Contractor has taken all reasonable steps and accommodations to avoid such detrimental impact.

For purposes of this subsection, the Contractor may receive one (1) "dry-out" day for each one (1.0) inch of precipitation, provided that the site conditions are detrimentally impacted on each day. By way of example only, if there is 2.5 inches of precipitation at the Project location during the 72-hour period, the Contractor may receive two (2) "dry-out" days. "Dry-out" days are in addition to any adverse weather days for the work day in question.

§ 15.1.5.4.3 Adverse weather means weather that is more severe, in magnitude or duration or both, than bad weather which should be expected and anticipated by the Contractor for the season and the Project location.

§ 15.1.5.4.4 Actual adverse weather days means days where adverse weather, or the results of adverse weather, prevented Contractor's work on critical path Work activities for fifty percent (50%) or more of Contractor's scheduled work day.

§ 15.1.5.4.5 The following listing defines monthly anticipated adverse weather delay work days for the Contract period. Contractor's construction schedule, including the critical path schedule, during the term of the Agreement must reflect these anticipated adverse weather delay work days in all weather dependent Work activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
8	5	3	4	6	4	5	5	3	2	3	6

§ 15.1.5.4.6 Contractor must adequately and sufficiently document actual adverse weather days in Contractor reports. Adequate and sufficient documentation is such that an independent third-party, including the Initial Decision Maker

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and the Owner, could determine that adverse weather conditions existed and that the requirements of an actual adverse weather day were met. For purposes of clarity, charts showing only daily cumulative rainfall amounts are insufficient to adequately and sufficiently document actual adverse weather days. Contractor's failure to adequately and sufficiently document conditions to show actual adverse weather days may result in rejection of Contractor's claim.

**§ 15.1.5.4.7** The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in the schedule above has been exceeded in a particular month, Contractor may submit a claim to the Initial Decision Maker for consideration.

**§ 15.1.5.5** No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control. Claims for extension of time may only be considered because of weather delays, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Only claims for extension of time shall be considered because of hindrances or delays not the fault of either Contractor or Owner, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Board approval shall be required for any extension of time. No damages shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

**§ 15.1.5.6** Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, weather day, or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

Except for those losses covered by insurance required by the Contract Documents and specific items of damages allowed for in this Agreement and in the Contract Documents, the Construction Manager and the Owner waive all Claims against each other for consequential damages arising out of or relating to this

*(Paragraphs deleted)*

Contract, including consequential damages due to either party's termination of this Agreement.

### **§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES**

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Owner and Owner's Designated Representative or Program Manager (if any) will serve as the Initial Decision Maker for Claims arising from or relating to the Construction Manager's services. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data

will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

**§ 15.2.6.1** Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then they waive their rights to mediate or pursue dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 ALTERNATIVE DISPUTE RESOLUTION**

**§ 15.3.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may by mutual agreement of the Owner and Contractor, after written recommendation by the Architect or thirty (30) calendar days after submission of the Claim to the Architect, be subject to mediation.

**§ 15.3.2** If the parties agree to resolve their Claims by mediation, such mediation shall be subject to and in accordance with the Nebraska Uniform Mediation Act. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by a mediation center approved by the Nebraska Office of Dispute Resolution.

**§ 15.3.3** If mediation is agreed to by the parties, the parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Education, signed by the parties if approved by the Board of Education, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Nebraska.

**§ 15.3.4** A party may elect at anytime to resolve their claim through litigation pursuant to Section 13.1.

### **§ 15.4 NO ARBITRATION**

**§ 15.4.1** Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

**§ 15.5** Contractor stipulates that Owner is a political subdivision of the State of Nebraska, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Nebraska. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

SARPY COUNTY SCHOOL DISTRICT 77-0046, A/K/A  
SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS  
Dated this \_\_\_\_ day of January, 2020

**OWNER** (Signature)

Cori Swanson, President Board of Education  
(Name /Title)

BOYD JONES CONSTRUCTION COMPANY  
Dated this \_\_\_\_ day of December, 2019

**CONSTRUCTION MANAGER AT RISK** (Signature)

Tim Meyer, Sr. V.P. Operations  
(Name/Title)

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# **Additions and Deletions Report for**

## **AIA® Document A201™ – 2007**

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### **PAGE 1**

#### **for the following PROJECT:**

*(Name and location or address)*

Springfield Platteview Community Schools

Project A – Construction of a new, three section elementary school building and related site utilities and infrastructure work and required furnishing, fixtures and equipment, generally consisting of approximately 70,000 square feet to accommodate 500 students, to be located on the northeast side of the intersection of 9th and Main streets in Springfield, Nebraska ("Project A");

Project B – Construction of additions and renovations to the existing Westmont Elementary School building located at 13210 Glenn Street, Omaha, Nebraska, with final scope of such additions and renovations to be determined at a later date ("Project B").

Collectively Project A and Project B shall be the "Project" or "Projects".

...

*(Name, legal status and address)*

Sarpy County School District 77-0046, a/k/a Springfield Platteview Community Schools

A political subdivision of the State of Nebraska

14801 S. 108th Street

Springfield, NE 68059

402-592-1300

(Hereinafter referred to as "Owner").

...

*(Name, legal status and address)*

Alley Poyner Macchietto Architecture, Incorporated

A Nebraska corporation

1516 Cuming Street

Omaha, NE 68102

402-341-1544

(Hereinafter referred to as "Architect" or "Project Architect").

#### **THE CONTRACTOR:**

*(Name, legal status, address and other information)*

Boyd Jones Construction Company

A Nebraska corporation

950 S. 10 th Street, Suite 100

Omaha, NE 68108

402-553-1804

(Hereinafter referred to as "Construction Manager" or "CM@R").



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The Contract Documents are enumerated in the ~~Agreement~~Agreement, as amended, between the Owner and Contractor (hereinafter the ~~Agreement~~) and consist of the ~~Agreement, Conditions of the Contract Agreement, as amended,~~) and consist of the Agreement, as amended, Conditions, all sections of the Project Manual, including the Contract, as amended (General, Supplementary and other Conditions), Drawings, ~~Specifications, Specifications and~~ Addenda issued prior to execution of the Contract, other documents listed in the ~~Agreement Agreement, as amended,~~ and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~Owner or Architect.

**§ 1.1.1.1** The Agreement, as amended, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if signed by Contractor and the authorized representative of Owner's Board of Education. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein. Any reference to any Contract Document shall mean the document as amended and/or supplemented for this Project.

...

The Contract Documents form the Contract for Construction. The ~~Contract~~Contract, as amended, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only ~~by a Modification by a written Modification signed by Contractor, approved by Owner's Board of Education, and signed by the representative of Owner's Board of Education who is authorized to sign contracts.~~ As a material consideration for the making of the Contract, modifications to the Contract shall not be construed against the maker of said modifications. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

§ 1.1.2.1 To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Education. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, specifications, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications and the standards set forth in Section 2.1.4 of AIA Document B201-2007, as amended. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. The Construction Documents shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of construction documents.

§ 1.1.3.1 The Work shall include the obligation of the Contractor to visit the site of the Project prior to submitting a proposal. Such site visit shall be for the purpose of familiarizing the Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas.

§ 1.1.3.2 Nothing in these General Conditions shall be interpreted as imposing on either the Owner or the Architect or their respective agents, employees, officers, directors, or consultants any duty, obligation, or authority with respect to any items that are not intended to be incorporated into the completed Project, or that do not comprise the Work including, but not limited to, the following: shoring, scaffolding, hoists, temporary weatherproofing, or any temporary facility or activity because these are the sole responsibility of the Contractor.

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The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and ~~diagrams~~ diagrams, and shop drawings following approval by the Architect.

...

#### **§ 1.1.7 INSTRUMENTS OF SERVICE CONSTRUCTION DOCUMENTS**

~~Instruments of Service~~ Construction Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. ~~Instruments of Service~~ Construction Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER MANUFACTURER'S SPECIFICATIONS**

All references to the "Manufacturer's Specifications", "Manufacturer's Directions" or "Manufacturer's Recommendations" shall mean and refer to the referenced manufacturer's published specifications or manuals. Upon written approval of the Architect, such publications shall be made a part of and incorporated into the Contract Specifications as though repeated therein in full, and all manufactured articles, materials and equipment shall be

applied, installed, connected, erected, used, cleaned and conditioned accordingly, unless specified to the contrary by the Architect.

#### **§ 1.1.9 PROJECT MANUAL**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

#### **§ 1.1.10 PROJECT MANUAL ADDENDA**

Project Manual Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

#### **§ 1.1.11 APPROVED, APPROVED EQUAL, APPROVED EQUIVALENTS, OR EQUAL**

The terms "Approved" and "Approved Equal" relate to the substitution of materials, equipment, or procedure in writing by the Architect prior to receipt of bids.

#### **§ 1.1.12 ABBREVIATIONS**

<u>AIA:</u>	<u>American Institute of Architects</u>
<u>ACI:</u>	<u>American Concrete Institute</u>
<u>AHERA:</u>	<u>Asbestos Hazardous Emergency Response Act</u>
<u>AISI:</u>	<u>American Iron and Steel Institute</u>
<u>AISC:</u>	<u>American Institute of Steel Construction</u>
<u>ASA:</u>	<u>American Standards Association</u>
<u>ASTM:</u>	<u>American Society of Testing Materials</u>
<u>AWSC:</u>	<u>American Welding Society Code</u>
<u>CERCLA:</u>	<u>Comprehensive Environmental Response, Compensation, and Liability Act</u>
<u>EPA:</u>	<u>Environmental Protection Agency</u>
<u>FS:</u>	<u>Federal Specification</u>
<u>NES:</u>	<u>National Electrical Code</u>
<u>NIC:</u>	<u>Not in Contract. Indicates work not to be done by this Contractor under this Agreement</u>
<u>OSHA:</u>	<u>Occupational Safety and Health Administration</u>
<u>SPR:</u>	<u>Simplified Practice Recommendation</u>
<u>UL:</u>	<u>Underwriters Laboratories, Inc.</u>

#### **§ 1.1.13 BIDS or BIDDING**

The terms "Bids" or "Bidding" shall include any kind of competitive purchasing under Nebraska public letting statutes.

#### **§ 1.1.14 CONTRACT SUM**

"Contract Sum" shall mean the Guaranteed Maximum Price, when the Agreement is a Construction Manager at Risk Agreement (A133-2009), and the Contract Sum, when the Agreement is a Contractor Agreement (A101-2007).

#### **§ 1.1.15 MISCELLANEOUS DEFINITIONS**

##### **§ 1.1.15.1 FURNISH**

The term "furnish", unless specifically limited to context, means furnishing to the Project Site the items specified to include unpacking and assembly if necessary. "Install" means incorporation in the Work, including all necessary labor, materials, equipment and connections necessary to complete installation. "Provide" means furnish and install.

##### **§ 1.1.15.2 BUSINESS DAY**

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's President for inclement weather or other reason. Days on which the

Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Education on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or other special events.

#### **§ 1.1.15.3 CALENDAR DAY**

A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

#### **§ 1.1.15.4 HOLIDAYS**

Owner-approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

#### **§ 1.1.15.5 WORK DAY**

Work days are all calendar days except Holidays.

#### **§ 1.1.15.6 ANTICIPATED WEATHER DAYS**

An allowance of regular Work Days, established as anticipated Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.5.4 lists required Anticipated Weather Days.

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§ 1.2.1.1 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless he shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of his Proposal. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

§ 1.2.3.1 In case of conflicting provisions between or within the Drawings and Specifications, the Contractor is deemed to have accepted the reasonable method of completing the Work as agreed to by the Owner and the Contractor.

§ 1.2.3.2 All repeated features must be constructed alike, although drawn in detail only once, and similarly all detail and ornament must be continued throughout all moldings, bands, etc.

§ 1.2.3.3 Wherever Work is specified to be done "as directed", the Contractor must obtain specific direction from the Owner's representative before undertaking such Work.

§ 1.2.4 The Contractor is solely responsible for coordination of bidding and Scope of Work of Subcontractors and shall assume full responsibility for complete coordination of the various Subcontractors.

§ 1.2.5 In the interest of conciseness, references to specification sections and details are preceded by the word "see". Any such reference is to be interpreted to include the phrase "and comply with".

§ 1.2.6 Wherever an article, device or piece of equipment is referred to in the singular, such reference shall apply to as many of such articles as are shown in the Contract Documents or as are required to complete the installation.

#### **§ 1.2.7 RELATION OF SPECIFICATIONS AND DRAWINGS**

General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal

inconsistencies, then the Contractor shall base the bids and construction on the most expensive combination of quality and quantity of work indicated. For purposes of construction, the Architect shall determine the appropriate Work, after the Contractor brings the inconsistency to the Architect's attention. Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

#### **§ 1.2.8 MATERIALS, EQUIPMENT AND PROCESSES**

Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions which results in equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting completion. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. The Architect shall review and respond to proposed substitutions within fifteen (15) calendar days of receipt. The Owner may charge the Contractor for the Architect's time in reviewing and responding to an unreasonable number of substitutions requests by the Contractor. The Contractor shall bear no costs for the Architect's time in reviewing and responding to substitution requests from the Owner or the Architect. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contractor Documents, equally compatible with the existing installations and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved by the Architect and Owner, however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

#### **§ 1.2.9 STANDARDS AND REQUIREMENTS**

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the date of execution of the Agreement by the last party to execute said Agreement shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the date of execution of the Agreement and until Final Completion, pursuant to the terms of the Agreement between Owner and Architect. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

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In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. These Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization.

#### **§ 1.5**

#### **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND CONSTRUCTION DOCUMENTS**

**§ 1.5.1** ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other~~



~~reserved rights, including copyrights. Provided that all payments have been made to the Architect in accordance with the agreement with the Owner, all Construction Documents shall be exclusively owned by the Owner and the Owner shall own all copyrights in and to the Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service-Construction Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' any reserved rights.~~

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are ~~authorized granted a limited license to use and reproduce the Instruments of Service-Construction Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service-Construction Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. of the copyright holder. All copies of the Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.~~

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If the parties intend to transmit ~~Instruments of Service-Construction Documents~~ or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. ~~The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, Nebraska public school district identified in the Contract Documents. The Board of Education, by majority vote, is the only representative of the Owner, a public school district and political subdivision of the State of Nebraska, having the power to enter into or amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, or agree to an extension to the date of Substantial or Final Completion. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the President, who may delegate responsibilities as appropriate. Owner's Board of Education hereby delegates to the President or designee the authority to approve changes to the Work where such changes are within the Owner's contingency. Any such change shall be confirmed in writing between the Contractor and Owner's President or designee, and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the President or Board of Education; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.~~

**§ 2.1.2** ~~The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated, such property belonging to a political subdivision of the State of Nebraska. It shall be further understood that this Contract is not written for the benefit of third parties.~~

**§ 2.1.3** ~~The Owner shall require the Contractor and the Architect to meet periodically at mutually-agreed-upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual~~



obligations or modify the legal relationships which may otherwise exist.

§ 2.1.4 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents beyond the amount of professional liability or E&O insurance provided by Architect.

§ 2.2.1 Prior to commencement of the Work, the Contractor 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. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. The Owner, being a political subdivision of the State of Nebraska, must have adequate funds and financing as provided by law prior to award and execution of the Contract Documents.

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§ 2.2.3 The If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner; the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall Other than the metes and bounds noted in the legal description of the site, the Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work of the Work beyond the amount of professional liability or E&O insurance provided by surveyor. Other than the metes and bounds noted in the survey, if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements beyond the amount of professional liability or E&O insurance provided by surveyor.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. furnish, for information only and not as a Contract Document, such surveys or other information as it has in its possession as to the physical characteristics, legal limitations and utility locations for the site of the Project as it has in its possession. The Contractor shall confirm the location of each utility on the approved plans therefor on file with the public works department. The Contractor shall not be responsible for additional cost incurred should the utilities not be found in the location shown on said approved plans, either horizontally or vertically. The Contractor represents that he has inspected the site and available documents, and has satisfied himself as to the condition thereof including, without reasonable limitation, all apparent structural, surface and subsurface conditions thereof. The Contractor shall make no claims for any subsurface conditions shown or which could be reasonably ascertained from any investigations, including soil borings, tests and reports provided by the Owner.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy an electronic version of the Contract Construction Documents for purposes of making reproductions pursuant to Section 1.5.2.1.5.2 along with a to be determined number of hardcopy sets at no cost.

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If the Contractor fails to correct defective Work that is not in accordance with the requirements of the Contract Documents or the Construction Documents as required by Section 12.2 or repeatedly fails to carry out Work in

accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.entity. The authorized Owner's representative having the legal right to stop the Work shall be limited to the Owner's President.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents ~~Document~~ and fails within a ~~ten-day~~ seven (7) day period after receipt of written notice from the Owner to commence and continue correction of any such default or neglect with diligence and promptness, the Owner ~~may~~, may upon written notice to the Contractor, and without prejudice to other remedies the Owner it may have, correct such deficiencies. ~~any such deficiency.~~ In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the ~~reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services~~ necessary cost of correcting any such deficiency, including compensation for the Architect's and other consultants' additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized ~~representative~~ representative and includes the Construction Manager at Risk, if applicable.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract ~~Documents~~ Documents, and submittals approved pursuant to Section 3.12.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the ~~Contract~~, Contract activities of the Owner (or Owner's Designated Representative or Program Manager (if any), if applicable), or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.1.4** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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**§ 3.2.1** Execution of the Contract ~~by the and GMP Amendment by~~ Contractor is a representation that the Contractor has visited the site, become ~~generally familiar with local~~ familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents to be performed, and all reasonably known matters which may in any way affect the Work or its performance. The Contractor represents and warrants by submission of a Proposal that he has carefully examined

the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work. The Contractor shall not be entitled to any additional time or compensation for Contractor's failure to visit the site, or for any additional Work caused by the Contractor's fault, by improper construction, or by Contractor's failure to visit the site or to carefully study and compare the Contract Documents prior to execution of the Work. The Contractor further represents that the Contractor is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of Contractor's failure to follow the foregoing procedure and familiarize himself with all local conditions and the Contract Documents will not be permitted.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not solely for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; ~~however,~~ the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect.

**§ 3.2.3** ~~The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticability or omission in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived..~~

**§ 3.2.4** If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15-15 when the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect. Contractor shall not be entitled to additional compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents prior to the execution of the Work. Contractor shall take field measurements, verify field conditions, and shall carefully compare them to the Construction Documents. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 By entering into the Agreement with the Owner for the Work, the Contractor acknowledges that it has examined the Contract Documents, the character of the site and any existing structures, and is acquainted with the Work and the Contract Documents.

§ 3.2.6 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and/or hazardous materials surveys for the particular job sites involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. In the event of a conflict between this section or between section 3.14.3 hereof and the One-Call Notification System Act, Neb. Rev. Stat. § 76-2301 et seq., the One-Call Notification System Act shall prevail and control.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.

§ 3.2.8 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Consistent with the prevailing construction industry performance for similar projects in the area and such other performance standards expressly imposed on the Contractor by the Contract Documents. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the



Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. Contractor shall if required by Owner, require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall if required by Owner, contain a current photograph and the worker's name in a typeface large enough to be seen from a reasonable distance. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal of the offending employee from all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's subcontractor's forces, or one serious infraction, shall constitute a substantial breach of the Agreement justifying the immediate termination by Owner pursuant to Article 14. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense. Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work. Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

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**§ 3.3.4** The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.

**§ 3.3.5** To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, if not included in a lump sum bid, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

**§ 3.3.6** The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws,

rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section 3.3.6 are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

**§ 3.3.7** It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for ~~labor~~, qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.2.1** After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products and place those specified only under the conditions set forth in the specifications. Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when, in the judgment of the Owner, in consultation with the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

**§ 3.4.2.2** The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

**§ 3.4.2.3** By making requests for substitutions based on Section 3.4.2 above, the Contractor:

**§ 3.4.2.3.1** represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

**§ 3.4.2.3.2** represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;



§ 3.4.2.3.3 certifies that the cost data represented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

§ 3.4.2.3.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4 For all equipment furnished by others to be installed by the Contractor, the Contractor shall use manufacturer's detailed drawings as approved by the Architect, to establish roughing-in dimensions and location of services.

§ 3.4.5 The Contractor shall inspect all materials as delivered to the premises and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.4.6 Including, but not limited to, the specific requirements of Section 10.1, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct.

§ 3.4.7 Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This Section requiring advance notice does not apply to a publicly-held corporation.

#### **§ 3.4.8 CRIMINAL HISTORY CHECKS**

§ 3.4.8.1 Contractor shall obtain all criminal history information regarding the "covered employees", as defined below, of the Contractor and certifications of criminal history compliance from all agents and subcontractors of the Contractor. Before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor has complied with the statutory requirements as of that date. Upon request by Owner, Contractor will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 3.4.8.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 3.4.8.3 For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has

or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses: if at the time of the offense, the victim was under 19 years of age or enrolled in a public school: a felony offense under Nebraska Criminal Code Article 3 Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under the Nebraska Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 et seq.; or an equivalent offense under federal law or the laws of another state. The Owner may take into consideration the nature and circumstances of the criminal history to assure its interests in protecting school children and in its discretion determine individual can serve on Owner's Project.

#### **§ 3.4.8.4 OWNER'S ADDITIONAL REQUIREMENTS RELATED TO CRIMINAL HISTORIES**

In addition, Contractor will at least annually obtain criminal history record information that relates to any employee of the Contractor and certifications of criminal history compliance from all agents, or subcontractors of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or, other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present".

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The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy or assumed beneficial use of the damaged or defective portion of the Project. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work within the Project, and each such individual warranty shall run from Substantial Completion date of each Project. Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this Section are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

**§ 3.5.2** Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents.

§ 3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten (10) business days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this Section shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All forms will be required to be submitted prior to Final Payment.

§ 3.5.6 The warranties of Contractor provided in Sections 3.5.1, 3.5.2, and 3.5.3 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the warranty period, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any warranty items which are observed or reported during the warranty period. Contractor shall prosecute such warranty work without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty period. If Contractor fails to provide the schedules to Owner and Architect, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

§ 3.5.8 Prior to receipt of Final Payment, Contractor shall:

- .1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of Substantial Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Substantial Completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required by the express terms of the Contract Documents;
- .4 Bind all warranties, both electronically and in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and

- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing.  
.8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner.

**§ 3.5.9 ALL WARRANTIES SHALL COMMENCE NO EARLIER THAN THE SUBSTANTIAL COMPLETION DATE OF EACH PROJECT.**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner is an exempt entity under the tax laws of the State of Nebraska. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. Contractor shall obtain Resale Certificates from Contractor's suppliers. Failure of Contractor or any Sub-Contractor to obtain Resale Certificates from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

**§ 3.7**

**PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

~~§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.~~The Contractor shall be responsible for making and submitting application for the building permit. The Owner shall pay the municipality directly for the building permit and all other development "impact" fees, if any. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses, and inspections necessary for proper execution of the Contract and which are legally required when bids or proposals are received. Such fees and expenses shall only be reimbursable to Contractor if expressly agreed to herein.

**§ 3.7.1.1 The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar connection charges.**

**§ 3.7.1.2 The Contractor shall pay directly all temporary utility charges, tap charges, and water meter charges, without reimbursement from Owner. After consultation with the Owner, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a land-disturbing-activity permit for the Project. The Owner's consultants will prepare a Storm Water Pollution Prevention Plan (SWPPP) and the Notice of Intent (NOI) for the project, and shall obtain the NPDES storm water construction permit. The Contractor shall implement all measures identified in the SWPPP. The Contractor shall be responsible for implementing all measures identified in the SWPPP, conducting regular site inspections, complying with all record keeping requirements included in the NPDES permit and the SWPPP, implementing all maintenance measures identified during inspections, and amending the SWPPP as necessary if erosion control measures are found to be ineffectual. Also after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with all regulations administered by the Nebraska Department of Environmental Quality (NDEQ) and local authorities. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, Contractor's subcontractors, the Project, or the Owner. Owner hereby holds Contractor harmless from and agrees to indemnify Contractor for all fines, penalties, costs, damages and expenses arising out of, caused by, or related to mistakes made by Owner's consultants in their preparation of the SWPPP and NOI.**



**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any invoices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 3.7.3** If the Contractor performs Work ~~knowing when Contractor knows or reasonably should have known~~ it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 ~~Concealed or Unknown Conditions.~~** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide ~~notice to the Owner~~ written notice to the Owner, the Owner's Designated Representative or Program Manager (if any), and the Architect before conditions are disturbed and in no event later than ~~21~~ three (3) business days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. and report findings and a recommended resolution in writing to Owner and Contractor. If Owner's Board of Education and Contractor cannot agree on an equitable adjustment to the Contract Sum or Contract time, then either party may pursue alternative dispute resolution as provided for in Article 15 within ninety (90) calendar days of the Architect's recommendation.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and ~~Architect.~~ Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.7.6** Copies of any and all permits, licenses and certificates shall be delivered to the Owner as soon as they are obtained. Along with the request for final payment, the Contractor shall deliver the originals of such permits, licenses and certificates to the Owner.

**§ 3.7.7** The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner and the Program Manager. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

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**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection, unless required to do so by the terms of the Construction Documents.

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- .1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site ~~and all required taxes~~, less applicable trade discounts;

...

- .3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted ~~accordingly by Change Order. The amount of the Change Order Sum, or the Owner's Contingency,~~ at Owner's discretion shall be adjusted accordingly. The amount of the adjustment shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

**§ 3.8.4** When performing Work under allowances, Contractor shall solicit and receive not less than three (3) written proposals unless this requirement is waived by the Owner's designated representative, and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The responsibility of the superintendent is to supervise, schedule, coordinate and manage field operations. The superintendent is not to be used as a tradesman. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-Subcontractors and their employees. The Superintendent shall provide his or her email address and cell phone number to the Owner and the Architect and shall be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The Superintendent shall be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

**§ 3.9.1.1** As directed by the Architect or Owner's Representative, there is to be held at a location designated by the Architect or Owner's Representative, a meeting called by the superintendent as representative of the Contractor of the representatives of the various trades engaged about the Work for furthering the progress of the Work and giving of clarifications by the Architect and instructions by the Owner. If the Contractor's representatives fail to attend or to execute the instructions given to them, they shall on request of the Owner be dismissed from the Work and other representatives must be immediately substituted.

**§ 3.9.1.2** The Contractor shall not change the Superintendent without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The Superintendent shall be present at the Project until substantial completion. At the Owner's request, the Contractor shall assign a different Superintendent to the Project.



§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within thirty (30) calendar days of Substantial Completion.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under General Conditions for such day.

§ 3.9.5 Questions about plan interpretation or directions shall be submitted by Contractor's superintendent to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, ten (10) calendar days after being awarded the Contract and as part of its Guaranteed Maximum Price proposal, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall not be changed without the written consent of the Owner and Architect. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval. The Owner's or Architect's silence as to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligation to meet those time limits, nor shall it make the Owner or Architect liable for any of Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Owner's or Architect's silence as to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow and keep current, for the Architect's and Owner's Representative's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Neither the Contractor's preparation nor the Architect's receipt or review shall modify the Contractor's responsibility to make required submittals or to do so in a timely manner to provide for review in accordance with Section 4.2.7 as modified herein, except to the extent that the Architect's review extends more than seven (7) calendar days after notice to the Architect that a timely review is needed. The submittal schedule shall

include a resource table listing all contractors, sub-contractors, design team, and Owner, and shall be resource-loaded. The Contractor shall also generate an activity-within-resource report and keep these current.

§ 3.10.2.1 The schedule of submittals shall be submitted along with the construction schedule.

§ 3.10.2.2 Submission and review of the schedule shall not relieve the Contractor of its obligations to meet the time limits of the Contract.

§ 3.10.2.3 Additional provisions for submittal of the construction schedules are included in the specifications.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Owner, Owner's Designated Representative or Program Manager (if any) and Architect.

§ 3.10.4 Should the Contractor fail to comply with the progress schedule or, in the Owner's opinion, otherwise fails, refuses, or neglects to supply a sufficient amount of labor or material in the prosecution of the Work, Owner shall have the right to (1) direct the Contractor to furnish such additional labor and/or materials as may, in the Owner's opinion, be required to comply with the progress schedule or otherwise diligently prosecute the Work, or (2) furnish such additional labor and/or materials as may be required to comply with said schedule. Any costs incurred by Owner pursuant to the exercise of its rights under this Section shall be borne by the Contractor and shall not increase the Contract Sum.

§ 3.10.5 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. § 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, most current Construction Schedule, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, field test records, inspection certificates or records, manufactures' certificates, Product Data, Samples and similar required submittals. These shall be available to the Architect, the Owner, and the Program Manager at all times and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall also display the most current Construction Schedule at the Site for reference and reliance by the Owner and Architect.

§ 3.11.2 In addition to any other requirement in the Contract Documents and prior to installation, the Owner may require the Contractor to furnish or cause a subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

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**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the ~~information given and the design concept expressed in the~~ Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor must provide the Architect, with copies to the Owner and Owner's Designated Representative or Program Manager (if any), with copies of all submittals made to regulatory agencies.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and ~~coordinated~~ verified that the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. The Contractor must correct, at its sole cost and expense and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval ~~thereof, thereof, except for any~~ such errors or omissions which are within Architect's statutory or contractual design responsibility.

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**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals; ~~provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. professionals.~~ Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. ~~The Unless the Contractor is providing professional services as allowed herein, the Contractor shall not be responsible for the~~

adequacy of the performance and design criteria specified in the Contract Documents. A licensed professional architect or engineer must prepare plans, specifications and estimates for all the Work, as governed by the Nebraska Engineers and Architects Regulation Act. In the event that Contractor retains a licensed design professional under the terms of this Section, Contractor shall require that the licensed design professional carry comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.11 The Contractor shall submit complete drawings, data and samples to the Architect at least fifteen (15) calendar days prior to the date the Contractor needs the reviewed submittals and samples returned. Additional provisions for shop drawings, product data and samples are included in the specifications. The Contractor shall be prepared to submit color samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) calendar days of the award of Subcontract(s). All color samples required for the Work shall be received within sixty (60) calendar days of the date of the approval of the Contract Sum or Guaranteed Maximum Price. Once samples of all key items are received, the Architect will finalize color selections.

§ 3.12.12 The Contractor shall submit the number of copies of product data and samples which the Contractor and subcontractors need for their use, plus two additional sets for the Architect, one additional set for the Owner and one additional set for each of the Architect's consultants involved with the particular section of Work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect, plus one additional opaque print for each of the Architect's consultants involved with the particular section of Work. The reproducible transparency will be marked by the Architect and/or his consultants. After final review and correction of the submittal, the Contractor shall send one corrected set to the Architect and each of the Architect's consultants involved with the particular section of Work.

§ 3.12.13 The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

§ 3.12.14 The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed professional engineer.

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~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~  
§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall provide adequate protection throughout the course of the Work for all trees and shrubs on the site indicated in the Contract Documents as not to be removed. The Contractor shall be responsible for damage to any such trees or shrubs during the period of construction and shall replace or repair any trees or shrubs damaged by the Contractor, its Subcontractors or employees, with plantings acceptable to the Owner at no cost to the Owner. Damaged sod areas shall be seeded acceptable to the Owner. All landscape repairs shall carry one (1) year full guarantee.

§ 3.13.3 The Contractor shall enforce the Owner's instructions regarding signs, advertisements, noise, fires and smoking.

§ 3.13.4 The Contractor shall keep the site of construction reasonably free from weeds during the course of construction. The Contractor shall cut all weeds on the site so as to discourage further germination.



§ 3.13.5 All utilities, curbs, drives, streets, buildings, mechanical and electrical equipment, etc., which are damaged or cut during construction and are to be used after construction shall be repaired such that the quality of the repaired item equals or exceeds its condition prior to construction.

§ 3.13.6 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.7 The Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.13.8 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Construction Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy.

§ 3.13.9 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building.

3.13.10 Work will be performed by Contractor in accordance with the Contract Documents, or other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time. The Contractor must not permit work outside of hours established in the Contract Documents on a Saturday, Sunday or other County, State or federal holiday without the written consent of the Owner, given after prior written notice to the Architect and any other applicable consultants; such consent, if given, may be conditioned upon payment by the Contractor of the Owner's, Architect's and any other applicable consultants' additional costs and fees, testing or regulatory agency costs incurred in monitoring such off-hours Work. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times in the interest of the safety and protection of persons or property at the Site or adjacent thereto, or in the event of an emergency. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent and person responsible for the protection of persons and property at the Site and compliance with all applicable laws and regulations, if different from the superintendent.

§ 3.13.11 Additional provisions for use of site are included in the Specifications.

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§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. ~~properly~~, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Construction Documents and Contract Documents. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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§ 3.14.3 The Contractor shall locate, protect, and save from injury utilities of all kinds, either above or below grade, inside or outside of any structure, found in the areas affected by its Work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect result of any of its Work and shall repair all such damage at its expense and as a part of the Work included in the Contract Documents. The Contractor shall not be entitled to any increase in the Contract Sum or the Contract Time on account of such damage to any utility.

§ 3.14.4 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

§ 3.14.5 Additional provisions for cutting and patching of work are included in the Specifications.

§ 3.15.1 The Contractor—Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition.

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§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

§ 3.15.5 Additional provisions for cleanup are included in the Specifications.

The Contractor shall provide the Owner and Architect and their designated representatives, access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, SHALL WAIVE AND RELEASE CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER



OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT, AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the ~~Architect.~~ Owner and Architect in writing.

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**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S DESIGNATED REPRESENTATIVE OR PROGRAM MANAGER (IF ANY), ARCHITECT, OWNER'S DESIGNATED REPRESENTATIVE OR PROGRAM MANAGER, OWNER'S BOARD OF EDUCATION, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF TO THE EXTENT THE WORK IS NOT COVERED BY BUILDERS RISK INSURANCE PROCEEDS) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF NEBRASKA.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY NEBRASKA LAW.

§ 3.18.4 THE OWNER MAY CAUSE ANY OTHER CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

§ 3.18.5 THE PROVISIONS OF SECTION 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.18.6 ONLY TO THE EXTENT ALLOWED BY LAW, THE OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR, IT'S DIRECTORS, OFFICERS, AND EMPLOYEES, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PROJECT BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE OWNER, ANYONE IT CONTROLS OR EXERCISES CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR OR OTHER INDEMNIFIED PARTIES.

### § 3.19 ANTITRUST VIOLATION

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C. § 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

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§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld. Owner.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and new architect whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

§ 4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and the Contract Documents by the duties, responsibilities, or activities of the Architect.

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§ 4.2.1 The Architect and Owner's Designated Representative or Program Manager (if any) will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during

~~construction until the date the Architect issues the final Certificate for Payment. The Architect Documents. The Architect and Owner's Designated Representative or Program Manager (if any) will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract Documents.~~

**§ 4.2.2** ~~The Architect will visit the site at Architect or his authorized representative shall visit the site at least once per week (or more per week when deemed necessary by the Owner's President or when necessary to protect Owner's interests) and at other intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed to inspect the progress, quantity and quality of the work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Construction Documents and the Contract Documents and on time. Furthermore, an appropriate number of job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, Owner's Designated Representative or Program Manager (if any) the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.~~

**§ 4.2.3** ~~On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.~~

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Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect and Owner's Designated Representative or Program Manager (if any) about matters arising out of or relating to the Contract. However, Owner reserves the right to communicate directly with the Contractor. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** ~~Based As further provided in the Contract Documents based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. All Certificates of Payment must be reviewed by Owner's Designated Representative or Program Manager (if any) before being submitted to the Owner. All Certificates of Payment must be reviewed and approved by the Owner, or, at the Owner's option, by the Owner's Designated Representative or Program Manager (if any).~~

**§ 4.2.6** ~~The Architect has authority to shall reject Work that does not conform to the Construction Documents and Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require recommend to Owner additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.~~

**§ 4.2.7** ~~The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. the Construction Documents and the Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the general accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Construction Documents and Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.~~

**§ 4.2.8** ~~The Architect will prepare Change Orders and Construction Change Directives, and Architect, in full cooperation and coordination with the Owner, or, at the Owner's option, by the Owner's Designated Representative or Program Manager (if any), shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation. The Architect, in full cooperation and coordination with the Owner, may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, or recommend to~~



the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

**§ 4.2.9** ~~The Architect~~ Architect, in full cooperation and coordination with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of ~~final completion~~; Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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**§ 4.2.11** The Architect will interpret and ~~decide matters~~ make recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and ~~decisions or recommendations~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and ~~decisions, recommendations~~, the Architect will endeavor to secure faithful performance by both Owner and Contractor, ~~will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.~~ Contractor.

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

**§ 4.2.14** The Architect will review and respond to requests for information about the Construction Documents and the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for ~~information.~~ information, at no additional cost to the Owner.

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**§ 5.1.3** Subcontractors, Sub-subcontractors and material suppliers shall not contact the Architect or the Owner directly. Any information they might need shall be obtained through the Contractor.

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as soon as practicable within ten (10) calendar days after award of the Contract,~~ shall furnish in writing to the ~~Owner through Owner, Owner's Designated Representative or Program Manager (if any), and the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. ~~The Architect may reply within 14~~ list of subcontractors shall be submitted in duplicate on AIA Document G805, 2001 Edition. The Architect shall reply within fourteen (14) calendar days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14-day 14 day~~ period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner. The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed. In the event a subcontractor is replaced, the Owner and Architect shall be given a reasonable time or 14 days, whichever is less, to object to the new subcontractor. Failure of the Owner or Architect to object in a timely manner shall constitute consent to the new subcontractor doing the proposed work.

...

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work,~~ When the parties agree on a proposed



substitute Subcontractor or if the Owner requires use of a specific subcontractor, then the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

...

**§ 5.2.5** Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums shall be allowed for failure to so inspect or investigate.

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~  
**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** The Contractor is fully responsible for acts and omissions of the Subcontractors and persons employed by them or under their control.

**§ 5.3.3** Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

**§ 5.3.4** The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

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**§ 5.4.1** Each subcontract agreement for a any unperformed portion of the Work is assigned by the Contractor to the Owner, provided that

- ~~.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 either in accordance with Article 14 or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and~~
- ~~.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; bonds relating to the Contract; and~~
- ~~.3 the Subcontractor provides bonds as required by law of prime contractors and by Owner~~

...

~~§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.~~

~~§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract. Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.~~

#### **§ 5.5 NOTICE OF SUBCONTRACTOR DEFAULT**

~~Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.~~

...

~~§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.~~

...

~~§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. Contractor shall cooperate with other separate contractors to ensure that the Work remains on schedule. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. agreement between the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~

~~§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

~~§ 6.1.4 Additional provisions for separate contracts are included in the Specifications.~~

## **§ 6.2 MUTUAL RESPONSIBILITY CONTRACTOR'S RESPONSIBILITY**

**§ 6.2.1** The Contractor shall coordinate the scheduling of work performed by any of the Owner's separate contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's separate contractors. The Contractor shall afford the Owner and separate contractors reasonable site access and opportunity for introduction and storage or staging of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's separate contractors.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report in writing to the Architect ~~apparent and Owner discovered~~ discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so and results, and shall promptly report in writing to the Architect and Owner if Owner's separate contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, Work and is performed in a timely manner, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

**§ 6.2.3.1** If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

**§ 6.2.3.2** If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

**§ 6.2.3.3** All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor.

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 40.2.5-10.2.5, as amended.

**§ 6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3-14.3.14, as amended.

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If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Owner will allocate the cost among those responsible.

...

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the

limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner and Owner's Designated Representative or Program Manager (if any).

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**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Construction Documents and the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price shall be valid unless so ordered or directed.

**§ 7.1.4** The Contractor shall in no instance commence Work on or provide materials for or make changes in the Work for this Project which will require additional payment from the Owner to the Contractor until the Contractor has requested and obtained in writing either a signed written Change Order or signed written approval from the Architect and Owner's Designated Representative or Program Manager (if any) to proceed with the extra Work. The Change Order or written approval shall not be valid unless signed by a principal of the firm of the Architect's office.

**§ 7.1.5** Failure of the Contractor to obtain a written Change Order or written approval from the Architect and Owner's Designated Representative or Program Manager (if any) before commencing such Work shall constitute cause for rejection of request for additional compensation for such work by the Contractor.

**§ 7.1.6** Each request for approval or additional work which is to require additional payment from the Owner, or in instances whether credit is to be allowed to the Owner for omission of certain work or materials, shall be accompanied by a price quotation, including a complete cost breakdown of materials, labor, overhead and profit.

**§ 7.1.7** The total Contractor mark-up for overhead, profit or fee for work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total Contractor mark-up for overhead, profit or fee for supervision of work performed by subcontractors' forces shall not exceed FIVE PERCENT (5%) of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit or fee for work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed FIFTEEN PERCENT (15%) of the total cost of the Change in the Work plus one hundred twenty five dollars (\$125.00) minimum charge to the Owner for any Change Order requiring an addition to the scope of the Work of the Project, and a fee of ONE PERCENT (1%) for additional bond costs.

**§ 7.1.8** Allowance balances that are not used in connection with the scope to which they are allocated in the GMP Amendment may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

...

- .2 The amount of the adjustment, if any, in the Contract ~~Sum~~ Sum or Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

**§ 7.2.3** Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

**§ 7.2.4** In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

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**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on ~~one of the following methods:~~ the following method:

**§ 7.3.3.1** Changes in the work shall be as established in the contract documents. In the event of a Construction Change Directive that constitutes either an addition to or a deletion from the Scope of the Work for project as established at the time of execution of the contract for construction, the following adjustments shall be made:

**§ 7.3.3.1.1** Cost of Work: The actual cost as determined by lump sum pricing, provided in detail, and/or unit cost pricing of such additions or deletions to the Scope of the Work shall be added or subtracted from the contract price.

**§ 7.3.3.1.2** Adjustments for General Requirements, Supervision and Overhead and Profit: Upon establishment of the Cost of Work of such additions or deletions, the contract price shall be increased for additions and decreased for deletions according to and not to exceed the following:

- ~~1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~ To Subcontractor for work performed by their own forces - 10% of the actual cost of the addition or deletion from the work.
- ~~2 Unit prices stated in the Contract Documents or subsequently agreed upon;~~ To Subcontractor for work performed by other than their own forces - 5% of the actual cost of the addition or deletion from the work.
- ~~3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~ To Subcontractor's Subcontractor/Material supplier for work performed by Subcontractor's Subcontractor/Material supplier's own forces. - 10% of the actual cost of the addition or deletion from the work.
- ~~4 As provided in Section 7.3.7.~~ To Subcontractor's Subcontractor/Material supplier for work performed by other than Subcontractor's Subcontractor/Material supplier's own forces. - 5% of the actual cost of the addition or deletion from the work.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices ~~shall may, by mutual written agreement,~~ be equitably adjusted.

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 ~~then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work plus the Construction Manager's Fee. Direct costs shall be limited to the following:~~

- ~~1 Costs~~ Actual costs of labor, including social security, ~~old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~
- ~~2 Costs~~ Actual costs of materials, supplies and equipment, including cost of transportation, ~~whether incorporated or consumed;~~ used in performing the Change in the Work;
- ~~3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~ Actual rental costs of machinery and equipment rented from third parties, exclusive of hand tools; and



- ~~4 Costs Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~
- ~~5 Additional costs of supervision and field office personnel directly attributable to the change and permit fees, related to the Work.~~

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

~~§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect.~~

~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.~~

~~§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.~~

~~The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. § 7.4.1 With prior written notice to the Owner's representative the Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the Construction Documents and the Contract Documents, subject to approval by the Owner. Such changes will be effected by written order signed by the Architect in the form of an Architect's Supplemental Instruction (ASI), and shall become binding as a part of the Contract Documents. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.~~

~~§ 7.4.2 Allowance balances that are not used in connection with the scope to which they are allocated in the GMP Amendment may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.~~

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~~§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial-Final Completion of the Work.~~

~~§ 8.1.2 The date of commencement of the Work is the date established in the Agreement first business day after Contractor's written Notice to Proceed. The Notice to Proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by Owner's Board of Education, signed by the Owner's authorized representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance, in compliance with Article 11. Issuance of the notice to proceed shall not relieve the Contractor of his responsibility to comply with Article 11.~~

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect, and agreed to by Owner, in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.

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§ 8.2.1 Time limits and bench mark dates, including dates for Substantial Completion and Final Completion of the Project stated in the Contract Documents and the critical path schedule for the Project prepared by the Contractor and approved by the Owner, Appendix "A" attached hereto, are of the essence of the Contract. By executing the Agreement the Contractor confirms stipulates that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. Owner, or prior to approval of Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Contract. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Final Completion within the Contract Time. The Contractor must maintain at the Site, available to the Owner and Architect, a copy of the most recently approved Project Schedule. If the Contractor's progress is not maintained in accordance with the most recently approved Project Schedule, the Contractor shall promptly provide a reasonable recovery schedule to correct the delays and bring the progress of the Work back into accordance with the most recently approved Project Schedule, at no cost to the Owner.

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion.

§ 8.2.5 The Contractor shall maintain at the Site, available to the Owner, Owner's Designated Representative or Program Manager (if any) and Architect, a copy of the most recently approved Project Schedule. If the Contractor's progress is not maintained in accordance with the most recently approved Project Schedule, the Contractor shall promptly provide a reasonable recovery schedule to correct the delays and bring the progress of the Work back into accordance with the most recently approved Project Schedule, at no cost to the Owner.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. **DATE OF COMMENCEMENT AND TIME OF COMPLETION** Contractor agrees that it will begin work immediately upon receipt of notice to proceed from the Owner, and that it will diligently proceed with said Work such that the same shall be completed within the time frame stated in the bid documents.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. **BEST EFFORTS** The Contractor acknowledges that the services to be performed are essential to the effective operation of the Owner and that, therefore, the Contractor will exercise its best efforts to complete the services called for under this Agreement in the minimum time possible and within the time specified in such Work orders as may be issued by the Owner to the Contractor. In the event that the Contractor for good cause shown cannot complete the services for a particular task or phase within the time agreed to, the Contractor shall make a written request to the Owner in accordance with Section 8.3.4 below.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. **NOTICE OF CONDITIONS CAUSING DELAY**

§ 8.3.3.1 Within five (5) working days after the commencement of any condition which is causing or may cause delay in completion, the Contractor must notify the Owner in writing of the effect, if any, of such condition upon the time

progress schedule and must state why and in what respects, if any, the condition is causing or may cause such delay, along with any proposed adjustments to the most recently approved Project Schedule.

§ 8.3.3.2 Failure to strictly comply with this requirement may, in the discretion of the Owner, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

#### **§ 8.3.4 EXTENSION OF TIME**

§ 8.3.4.1 Any extension or extension of time for the completion of the Work may be granted by the Owner subject to the provisions of this section, but only upon written application therefor by the Contractor to the Owner.

§ 8.3.4.2 An application for an extension of time must set forth in detail the source and nature of each alleged cause of delay in the completion of the Work, the date upon which each such cause of delay began, ended, or will end, and the number of days' delay attributable to each of such causes. It must be submitted prior to completion of the Work.

§ 8.3.4.3 If such an application is made, the Contractor shall be entitled to an extension of time for delay and completion of the Work caused solely: (1) by the acts or omissions of the Owner, its officers, agents, or employees; (2) by the acts or omissions of the Architect, its officers, agents, or employees; (3) by the acts or omissions of a separate contractor employed by the Owner; (4) by changes ordered in the Work; (5) by fire, governmental actions, unusual delay in deliveries, unavoidable and unforeseeable supervening casualties, or other causes beyond the Contractor's control; (6) by delay authorized in writing by the Owner.

§ 8.3.4.4 The Contractor shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the Owner may determine to result solely from such causes, and then only if the Owner may determine to result solely from such causes, and then only if the Contractor shall have strictly complied with all the requirements of this section. The Owner shall make such determination within thirty (30) calendar days after receipt of the Contractor's application for an extension of time; provided, however, said application complies with the requirements of this Section.

§ 8.3.4.5 The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently but, if at all, only for the actual period of delay in completion of the Work as determined by the Owner, regardless of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of the Contractor or of its Subcontractor, if any, and would of itself (regardless of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault, or omission.

§ 8.3.4.6 The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Owner. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the Owner or any of its rights under the Contract Documents. Additionally, the Contractor shall not recover any additional compensation for any additional expense caused by such delay or delays.

#### **§ 8.3.5 DELAY CLAIMS**

Contractor represents and warrants that the provisions herein contained for extension of time are fair and adequate and that Contractor has had an opportunity to make provision for any and all delays within the contemplation of the parties. Accordingly, it is understood and agreed that Contractor shall not have or assert any claim for damages or prosecute any suit, action, cause of action, arbitration claim, or other proceeding against the Owner for such damages arising from any delay or hindrance in the completion of the Work called for in this Agreement caused by an act or omission on the part of the Owner, their agents, servants, employees or otherwise. Contractor agrees that the only possible compensation for any delay is an extension of time and payment of reimbursable expenses incurred for the Project previously approved by the Owner.

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The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. In the event that the Project is a

Construction Management at Risk Project, then any use of the term "Contract Sum" in the Contract Documents shall be interpreted to mean "Guaranteed Maximum Price".

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment or in the case of a Guaranteed Maximum Price, within fifteen (15) calendar days after establishing the Guaranteed Maximum Price, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect, Owner's Designated Representative or Program Manager (if any), or Owner may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702Cmc and G703 shall be used.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable), bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment to Contractors shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents, which schedule of values shall be updated from time to time as Contracts are awarded or as the Owner determines necessary. The schedule of values shall allocate the entire Cost of the Work among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Application for Payment of the Subcontractors.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.



~~§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~

~~§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Applications for Payment to Contractors shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 calculating (a) the expense which has actually been incurred by each Subcontractor and/or supplier on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment, divided by (b) the share of the Project budget allocated to that portion of the Work in the schedule of values. The Contractor shall also include a spreadsheet showing the budget verses billed-to-date totals for each of the standard CSI classifications.~~

~~§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Payments to Contractors shall be subject to retention of not less than ten percent (10%) of the first fifty percent (50%) of the subcontract work, and not less than five percent (5%) for the last fifty percent (50%) of the subcontract work. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.~~

~~§ 9.3.4 Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet to the Architect, Owner's Designated Representative or Program Manager (if any). All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.~~

~~§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that the Payment Application includes only Work self performed by Contractor or for which Contractor has been invoiced. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may justify termination of Contractor's Contract with Owner.~~

~~§ 9.3.6 The Owner may approve payment for materials and equipment stored off the site under the following conditions: The Contractor shall furnish and maintain a suitable storage site and proper storage conditions which must be approved in advance by the Owner. Equipment and materials covered by an Application for Payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or~~



theft and other hazards as the material may require. All protection must be provided by the Contractor at its own expense and must be maintained throughout the storage period. Materials and equipment must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled, "PROPERTY OF SPRINGFIELD-PLATTEVIEW COMMUNITY SCHOOLS" with Project name. Materials and equipment stored at the site must be stored so that they may be readily inspected, measured, and counted, at all times, by the Owner's representatives. Application for Payment for materials and equipment stored off the site must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS. The bill of sale must be accompanied by an inventory of stored materials or equipment, together with a description of the storage site by street number and city, or by a legal description of the premises. The Contractor agrees that in accepting payment for the materials or equipment stored off the site, it is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with Plans and Specifications. The Contractor further agrees that acceptance by the Owner of a bill of sale for stored materials or equipment does not imply acceptance of the same for the purposes of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance thereof by the Owner. PROVIDED THE CONTRACTOR HAS BEEN PAID ALL AMOUNTS CERTIFIED BY ARCHITECT AND NOT REASONABLY IN DISPUTE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER FROM AND AGAINST ALL CLAIMS, ACTIONS, LOSSES, COSTS, DAMAGES, EXPENSES, LIABILITIES AND OBLIGATIONS, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES, RESULTING FROM (1) THE ASSERTION OR FILING OF ANY CLAIM FOR AMOUNTS ALLEGED TO BE DUE TO THE CLAIMANT FOR LABOR, SERVICES, MATERIALS, SUPPLIES, MACHINERY, FIXTURES OR EQUIPMENT FURNISHED IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, (2) ANY OTHER LEGAL PROCEEDINGS INITIATED IN CONNECTION WITH THAT CLAIM.

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**§ 9.4.1** The Architect will, within seven (7) calendar days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for return the Payment Application to the Contractor as provided in Section 9.3.4; certify, sign and issue to the Contractor a Certificate of Payment for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, that the Architect has observed the progress of the Work; determined that the Work has progressed to the point indicated and in the Architect's professional opinion determined that the quality of the Work is in accordance with the Contract Documents. Construction Documents and the Contract Documents; and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents and the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Construction Documents and the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment in writing to the Owner will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

**§ 9.4.3** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

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- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; ~~Documents;~~
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

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§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

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§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) calendar days if Owner disputes the Architect's Certificate for Payment or Contractor's Payment Application, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents.

§ 9.6.1.1 Notwithstanding the above, the Owner shall retain full rights to perform its own review of each Application for Payment received from the Contractor, and may request additional clarification, information, or supporting documentation from the Contractor to support the amounts listed on any Application for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven-ten (10) calendar days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The Contractor shall, within ten (10) calendar days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) calendar days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. Subcontractor. Action on the part of the Owner to require Contractor to pay a Subcontractor shall not impose any liability on Owner.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.Contractor.

§ 9.6.8 Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor provided the Subcontractors and materialmen are performing their work to the satisfaction of Contractor and in a manner consistent with their contracts.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut down, delay and start-up, plus interest as provided for in the Contract Documents.§ 9.7.1 If the Owner does not pay the Contractor any payments certified by the Architect, which is undisputed, due and owing, within thirty (30) calendar days after the date of a Certificate for Payment, then the Contractor, upon ten (10) additional calendar days' written notice to the Owner and the Architect stating that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that 1) payment has been made, or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents or the Construction Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate the Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between the Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Architect does not issue a Certificate for Payment within seven (7) calendar days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) calendar days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional calendar days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Architect has determined that the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Documents and Construction Documents so the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof

have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place; substantial completion of all punch list items to be performed by Subcontractors. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal operations or other intended use or prevent the Owner from performing its preparatory tasks for opening the building, provided, however, as a condition precedent to Substantial Completion, the Owner has received from Contractor (for which Contractor is responsible to provide) all certificates of occupancy and other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for beneficial occupancy of the Project. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within thirty (30) calendar days. Contractor shall complete Owner's Substantial Completion Certificate.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner's Designated Representative or Program Manager (if any) a comprehensive list of items to be completed or corrected prior to final payment. ~~payment (i.e. "punch list").~~ Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents and the Construction Documents.

**§ 9.8.3** Upon receipt of the Contractor's punch list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's and Architect's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Construction Documents or the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than five inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will ~~prepare a Certificate of Substantial~~ prepare, sign and issue Owner's Certificate of Final Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof ~~unless otherwise provided in the Certificate of Substantial Completion portion.~~

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. ~~Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof.~~ Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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**§ 9.9.1** The Owner may occupy ~~or and~~ use any completed or partially completed portion of the Work at any stage ~~when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project.~~ Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. ~~Consent of the Contractor to partial occupancy or use shall not~~



be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect complete.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. In the event of Partial Occupancy, the Contractor shall promptly secure endorsement from its insurance carrier(s), consent from its surety(ies), if any, and shall apply to the appropriate public authorities that have jurisdiction over the Work to permit Partial Occupancy.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. In the event of Partial Occupancy before Substantial Completion as provided above, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit such building services as heating, ventilating, cooling, water, lighting, telephone, elevators, and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner desires to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provisions for such Work as soon as possible so that the aforementioned building services may be put into operation and use. In the event of Partial Occupancy prior to Substantial Completion, provided the Contractor has met all Milestone Dates set forth in the Contract for Construction, mutually acceptable arrangements shall be made between the Owner and the Contractor with respect to the operation and cost of necessary security, maintenance, and utilities, including heating, ventilating, cooling, water, lighting, telephone services, and elevators. The Owner shall assume proportionate and reasonable responsibility for the cost of the above services reduced by any savings to the Contractor for such services realized by reason of Partial Occupancy. Further, mutually acceptable arrangements made between the Owner and the Contractor with respect to such matters shall not be unreasonably withheld, delayed, or conditioned.

**§ 9.9.4** In each instance, when the Owner elects to exercise its right of Partial Occupancy, as described herein, the Owner will give the Contractor and Architect advance written notice of its election to take the portion or portions involved, and immediately prior to Partial Occupancy, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the conditions of the Work.

**§ 9.9.5** Partial Occupancy, or use of a portion or portions of the Work, or installation of furnishings and equipment shall not: (1) constitute evidence of Substantial Completion or Final Completion; (2) constitute acceptance of any Work or portions of any Work; (3) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in or malfunctioning of any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents; or (4) commence any warranty period under the Contract Documents, provided that the Contractor shall not be liable for ordinary wear and tear resulting from such Partial Occupancy.

**§ 9.9.6** Subject to the terms and conditions provided herein, if Contractor claims that delay or additional cost is involved because of Partial Occupancy by Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents.

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**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly prepare, sign and make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and Owner's Certificate of Final Completion and a final Certificate for Payment certifying to the Owner that on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance Construction Documents and that the entire balance, including all retainages found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final payment shall be made by the Owner in accordance with Owner's regular schedule for payments.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (1) using AIA Document G706 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be



responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) ~~a certificate evidencing evidence satisfactory to Owner~~ that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least ~~30~~-thirty (30) calendar days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) using AIA Document G707 consent of surety, if any, to final payment and (5), ~~if required by the payment, and~~ (5) except for amounts currently withheld by Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A; notarized subcontractor's liens release; and (6) receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Before final payment can be made, Department of Labor Division of Employment Form No. 16, Certificate of Contribution Status, must be received from the State of Nebraska Department of Labor certifying that the Contractor and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the date of Substantial Completion. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

**§ 9.10.2.1** An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;

**§ 9.10.2.2** A release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;

**§ 9.10.2.3** A certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;

**§ 9.10.2.4** A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

**§ 9.10.2.5** Consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;

**§ 9.10.2.6** Other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;

**§ 9.10.2.7** A as-built site plan in the form and number required by the Contract Documents;

**§ 9.10.2.8** All warranties and bonds required by the Contract Documents; and,

**§ 9.10.2.9** Record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner. The "as-built" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) calendar days after Owner's Board of Education has voted to accept the Work and approve Final Payment.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully

completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, ~~except that and~~ it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from  
.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;  
.2 — failure of the Work to comply with the requirements of the Contract Documents; or  
.3 — terms of special warranties required by the Contract Documents not constitute a waiver of any Claims by the Owner.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously ~~made in writing asserted pursuant to Article 15~~ and identified by that payee as unsettled at the time of final Application for Payment.

#### **§ 9.11 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY BOARD OF EDUCATION**

**§ 9.11.1** Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of the Board of Education of the SPRINGFIELD-PLATTEVIEW COMMUNITY SCHOOLS for the purpose of payment of the Contract Sum or any part thereof. See Article 14 for termination and fees upon termination.

**§ 9.11.2** It is agreed that the obligations of the Contractor herein are expressly contingent upon reasonable proof to the Contractor that the Owner has funds specifically approved by formal action of the Board of Education of the SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS for the purpose of payment of the Contract Sum or any part thereof.

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The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. **§ 10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC § 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards. This requirement applies continuously twenty-four (24) hours per day during the Construction Phase of the Project. Additionally, the Contractor shall comply with all safety standards and directives of the Owner's risk management consultants, including the consultants under any Owner Controlled Wrap-Up Insurance Program.

**§ 10.1.2** The Contractor expressly agrees that as between Owner and Contractor, it is in charge of and in control of the Work and that it shall have sole exclusive responsibility to assure the safety of the Work. Neither the Owner nor the Architect is in charge of the Work or in control of the execution of the Work. The obligation of the Contractor under this Section 10.1.2 shall be construed to include, but not be limited to, injury or damage because the Contractor, its agents, and employees failed to use or misused any scaffold, hoist, crane, stay, ladder, support, or other mechanical contrivance erected or constructed by any person, or any or all other kinds or equipment, whether or not owned or furnished by the Contractor. The Contractor expressly agrees that it is exclusively responsible for compliance with OSHA and local regulations for construction and that it is the employer within the meaning of those regulations. Any provision in the Contract Documents in conflict with this Section shall be null and void. It is the express intent of the parties that this provision be given broad and liberal construction to effectuate the intent of the parties that the Contractor, and not the Architect or Owner, is in charge of the Work.

**§ 10.1.3** The Contractor shall be required in compliance with the Asbestos Hazard Emergency Response Act of 1996 to certify that all products and materials supplied as part of this Project shall be free of asbestos.

§ 10.1.4 The Contractor shall be required to submit to the Owner, with a copy to the Architect and Contractor, written certificates from all known suppliers and Subcontractors that all materials and equipment used in the potable water system are lead free and that formaldehyde levels of all materials do not exceed acceptable levels established by H.U.D.

§ 10.1.5 Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

§ 10.1.6 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.1.7 Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and Contractor agrees that Contractor's representatives, employees, agents, and sub-contractors will abide by same.

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- .1 employees on the Work, school personnel, students, and other persons on Owner's premises and other persons who may be affected thereby; thereby including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

...

- .3 other property at the site or adjacent thereto, such as other buildings, and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. More specifically, the Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons, public utility companies, owners of the property having structures or improvements in proximity to the site of the Work, and persons in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operations in order to provide them with time to remove any obstruction for which they are responsible and to take action to properly protect their property.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable full protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

~~§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall exercise the utmost care so as not to endanger life or property in the prosecution of the Work. If the Contractor is negligent, the Contractor will be responsible for any and all damages, claims and of the defense of all actions against Owner and Architect resulting from the failure to exercise such care. Explosives shall not be employed in the prosecution of the Work.~~

~~§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. 10.2.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~

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~~§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.~~

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

~~§ 10.2.8 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.~~

~~§ 10.2.9 Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.~~

~~§ 10.2.10 The Contractor shall promptly report to the Architect and Owner or their designated representatives in writing all accidents arising out of or in connection with the Work that caused death, personal injury or property damage. This report shall give full details, including statements of witnesses, hospital reports and other information in the possession of the Contractor. In addition, in the event of any serious injury or damage, the Contractor shall immediately notify the Owner and Architect by telephone of such accident.~~

~~§ 10.2.11 The duty of the Architect to conduct construction review of the Contractor's performance does not include review of the adequacy of the Contractor's safety measures in, on, or near construction sites.~~

~~§ 10.2.12 Utilities or other services indicated to be abandoned shall be maintained in service as required until new facilities are provided, tested and ready for use. The Contractor shall schedule Work so that it does not necessitate long periods of shut-down of existing facilities and these shut-downs shall be coordinated with the Owner.~~

~~§ 10.2.13 All improvements on or about the site and adjacent property which are not to be altered, removed or otherwise changed shall be returned to the conditions which existed prior to initiation of the Work.~~

#### **§ 10.3 HAZARDOUS MATERIALS INJURY OR DAMAGE TO PERSON OR PROPERTY**

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) calendar days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

~~§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl~~



(PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **HAZARDOUS MATERIALS**

**§ 10.4.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), mercury, or lead, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. If Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.



§ 10.4.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Guaranteed Maximum Price, Date of Substantial Completion and/or Final Completion.

§ 10.4.3 UNLESS DIRECTED BY THE OWNER, IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, BOARD OF EDUCATION, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

§ 10.4.4 The Owner shall not be responsible under this Section 10.4 for materials or substances the Contractor brings to the site. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.4.5 IF THE CONTRACTOR FAILS OR NEGLECTS TO IDENTIFY ANY HAZARDOUS MATERIALS OR SUBSTANCES AT THE PROJECT SITE, FAILS OR NEGLECTS TO GIVE WRITTEN NOTICE OF THE EXISTENCE OF HAZARDOUS MATERIALS OR SUBSTANCES AT THE PROJECT SITE TO THE OWNER AND ARCHITECT, OR FAILS OR NEGLECTS TO PROPERLY RENDER THE HAZARDOUS MATERIALS OR SUBSTANCES HARMLESS, THEN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S BOARD OF EDUCATION, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR SUBSTANCES; PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF TO THE EXTENT THE WORK IS NOT COVERED BY BUILDERS RISK INSURANCE PROCEEDS) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF NEBRASKA.

## **§ 10.5 EMERGENCIES**

§ 10.5.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor shall promptly notify the Owner and Architect in writing within twenty-four (24) hours of any such emergency event. The Contractor shall promptly notify the Owner and Architect in writing within twenty-four (24) hours of any such emergency event.

§ 10.5.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

**§ 10.6 [omit]**

**§ 10.7 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM**

§ 10.7.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.7.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

**§ 10.8 HAZARDOUS MATERIALS CERTIFICATION**

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Education. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Education. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 11.0.2 Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five (5) business days after execution of the Contract by Owner. Satisfactory evidence shall include a duly-executed ACORD Form 25-S Certificate of Insurance naming Owner as a certificate holder with the following modifications in the "Cancellation" Section: delete (line through) the words "endeavor to"; place the number "30" in the blank; and delete the words "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives".

§ 11.0.3 All insurance required herein shall be obtained from a company licensed to do business in the State of Nebraska by the Nebraska Department of Insurance, and shall be underwritten by a company rated not less than A VII in A.M. Best's Key Rating Guide, Property-Casualty and that permits waivers of subrogation.

§ 11.0.4 All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's Worker's Compensation and Professional Liability insurance.

§ 11.0.5 All insurance required herein shall be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.0.6 [omit]**

§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor and the Contractor's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims which may arise out of, or result from, the Contractor's operations under the Contract whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including the following:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed; performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.3.1 and 11.1.2.4);

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- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

#### **COVERAGES PER OCCURRENCE AND CERTIFICATES OF INSURANCE**

§ 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Contractor.

§ 11.1.2.2 Certificates of insurance acceptable to the Owner and Architect shall be filed by the Contractor with the Owner and Architect prior to commencement of the Contractor's Work. These certificates required by this Article 11 shall contain a provision that coverages afforded under the policies and endorsements will not be canceled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate of insurance evidencing continuation of such coverage shall be submitted with the final Application for Payment as required in Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to the Owner and Architect in writing within seven (7) calendar days of Contractor's first notice of the same.

§ 11.1.2.3 The Contractor shall cause the commercial liability coverage, excess liability and automobile liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.2.4 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§ 11.1.2.5 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one

year thereafter.

§ 11.1.2.6 The Contractor shall require Subcontractors to provide applicable Workers' Compensation, General Liability, and Auto Liability coverages at the Subcontractors' own expense. Such coverages shall include the Owner as an additional insured and shall provide appropriate waivers of subrogation.

§ 11.1.2.7 The Contractor and its Subcontractors shall comply with all policy conditions of the insurance policies obtained pursuant to Section 11.1.1.

**§ 11.1.2.8 NEBRASKA WORKERS' COMPENSATION INSURANCE**

§ 11.1.2.8.1 A copy of a certificate of insurance or a certificate of authority to self insure issued by the Nebraska Department of Insurance showing statutory workers' compensation insurance coverage for the Contractor's employees providing services on a Project is required for the duration of the Project.

§ 11.1.2.8.2 Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

§ 11.1.2.8.3 Persons providing services on the Project include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

§ 11.1.2.8.4 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ 11.1.2.8.5 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts which meets the statutory requirements of Nebraska law for all employees of the Contractor providing services on the Project for the duration of the Project.

§ 11.1.2.8.6 The Contractor must provide a certificate of coverage to the Owner within seven (7) calendar days after being awarded the Contract.

§ 11.1.2.8.7 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 11.1.2.8.8 The Contractor shall obtain from each person providing services on the Project, and provide to the Owner:

- .1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven (7) calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ 11.1.2.8.9 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within fourteen (14) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ 11.1.2.8.10 The Contractor shall contractually require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts, which meets statutory requirements for all of its employees providing services on the Project for the duration of the Project;
- .2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate of



- coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- .3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .4 Obtain from each other person with whom it contracts, and provide to the Contractor:
    - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
    - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
  - .6 Notify the Owner in writing by certified mail or personal delivery, within fourteen (14) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
  - .7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

**§ 11.1.2.8.11** By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project and that the coverage will be based on proper reporting of classification codes and payroll amounts.

**§ 11.1.2.8.12** The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within fourteen (14) calendar days after receipt of notice of breach from the Owner.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

#### **LEVEL OF INSURANCE**

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

#### **§ 11.1.3.1 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

Workers' Compensation:	Nebraska Statutory Limit	
Employer's Liability:	Annual Limits Per Insured (minimum)	
	Construction Manager	Contractor
Bodily Injury by Accident:	\$1,000,000	\$500,000
Bodily Injury by Disease - policy limit:	\$1,000,000	\$500,000
Bodily Injury by Disease - each employee:	\$1,000,000	\$500,000

Each contractor and each subcontractor shall provide a blanket waiver of subrogation.

- .1 Contractor and each Subcontractor issued a separate policy.

#### **§ 11.1.3.2 AUTOMOBILE LIABILITY**



Combined single limit of \$1,000,000 per occurrence.

#### **§ 11.1.3.3 COMMERCIAL GENERAL LIABILITY**

	Annual Limits of Liability (minimum)	
	Construction Manager	Contractor
General Aggregate:	\$5,000,000	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000	\$2,000,000
Personal/Advertising Injury Aggregate:	\$2,000,000	\$2,000,000
Each Occurrence Limit:	\$1,000,000	\$1,000,000

- .1 Occurrence form
- .2 Deductible to Contractor and Subcontractor for property damage claims not to exceed \$5,000 per occurrence, provided that the level of deductible may be increased upon evidence of financial responsibility.
- .3 Coverage extensions to include:
  - The Contractor shall maintain completed operations coverage for three (3) years following issuance of the certificate of substantial completion for the Project.
  - Blanket waiver of subrogation
  - Blanket additional insured
- .4 Excludes: Asbestos, Nuclear Energy, Engineers/Architect's E&O

#### **§ 11.1.3.4 EXCESS LIABILITY**

Each Occurrence:	\$2,000,000 (minimum)
Annual Aggregate (Construction Manager):	\$10,000,000 (minimum)
Annual Aggregate (Contractor):	\$8,000,000 (minimum)

- .1 Occurrence form
- .2 Coverage extensions to include:
  - The Contractor shall maintain completed operations coverage for three (3) years following issuance of the certificate of substantial completion for the Project
  - Blanket additional insured
- .3 Excludes: Asbestos, Nuclear Energy, Engineers/Architect's E&O

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~ **§ 11.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ 11.2.2** The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date on which Owner begins to occupy or use any completed or partially-completed portions of the Work. If Owner occupies or uses any completed or partially-completed portion of the Work on any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work, pursuant to Sections 9.9.1 and 11.4.4. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, Contractor's builder's risk shall be primary.

**§ 11.2.3** Architect shall be responsible for purchasing and maintaining the Architect's liability and worker's compensation insurance as provided in the AIA Document B 104-2007, as revised.

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#### **§ 11.3.1 BUILDER'S RISK INSURANCE**

Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the ~~jurisdiction in which the Project is located, State of Nebraska,~~ property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be

covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, ~~and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss~~, and testing of all electrical and mechanical apparatuses and associated equipment, and "soft costs". Such builder's risk insurance shall also include transit coverages for materials to be incorporated into the Project, as well as temporary off-site storage locations. Sub-limits may apply with respect to transit and off-site coverages.

**§ 11.3.1.2** If the Owner does not ~~intend to purchase~~ such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Owner, the Contractor, and any Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3** ~~If the property insurance requires deductibles, the Owner shall pay Contractor shall be responsible for payment of the property insurance deductible, if any, in the event of an insured loss arising out of Contractor's Work. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.~~

**§ 11.3.1.4** ~~This Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site, the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.~~

**§ 11.3.1.5** ~~Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. The insurance required by this Section 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Section 11.3.6.~~

**§ 11.3.1.6** Insurance provided by the Owner in favor of the Contractor and Subcontractors as described in this Section § 11.3 shall not extend to vendors or suppliers of the Contractors or Subcontractors not performing work at the Project Site.

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The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the ~~Owner~~; Owner and include boiler and equipment breakdown coverage along with hot and cold testing coverage; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

...

The Owner, at the Owner's option, ~~may shall~~ purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, ~~however caused. The Owner waives all rights of action~~

against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards-however caused.

...

**§ 11.3.5** ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) calendar days' prior written notice has been given to the Contractor.~~

**§ 11.3.6** ~~Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~**WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The foregoing waiver afforded the Architect, his/her agents, and employees shall not extend to the liability imposed by Section 3.18.3. The Contractor shall require the Contractor's subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 11.3.6. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Contractor shall be responsible for payment of the deductible, if any, in the event of an insured loss caused by or arising out of Contractor's Work. Notwithstanding any other provision to the contrary in this Section 11.3.6, this waiver of subrogation shall apply only to the extent of actual recovery of any insurance proceeds under such policies (or recoverable proceeds if Owner or Contractor fails or refuses to recover such proceeds).

**§ 11.3.7** ~~WAIVERS OF SUBROGATION~~**ADJUSTMENT OF LOSS**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, ~~A loss insured under the Owner's builder's risk insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.9. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. Partial occupancy or use shall not commence until the insurance company or companies providing this property insurance have consented to such partial occupancy or use in writing by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain such consent of the insurance company or companies and shall take no action without written mutual consent that would cause cancellation, lapse or reduction of this insurance.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND PERFORMANCE AND PAYMENT BOND**

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish Contractor shall, as required by Neb. Rev. Stat. § 52-118, furnish separate payment bonds, as necessary, and bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract, with minimum Best Rating "A". Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Expenses to be Reimbursed. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall deliver the required bonds to the Owner not later than five (5) business days after execution of the Contract by the Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

§ 11.4.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.4.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Nebraska. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of



the Owner within ten (10) business days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

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**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect~~, Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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~~The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.~~  
**§ 12.2.1.1** The Contractor shall promptly correct Work rejected by the Architect or Work failing to conform to the requirements of the Contract Documents or Construction Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.1.2** The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

## **§ 12.2.2 AFTER SUBSTANTIAL COMPLETIONAFTER FINAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, 3.5 and as a material term of the contract between the Owner and the Contractor, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or thereof, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Construction Documents or the Contract Documents, the Contractor shall correct it promptly without additional cost to the Owner after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. the Work as provided in Section 12.2.2.1.1.

**§ 12.2.2.1.1** Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents or Construction Documents, including any warranty obligations, expressed or implied, or periods of limitation and repose. THE CONTRACTUAL ONE YEAR PERIOD FOR CORRECTION OF THE WORK IS IN ADDITION TO ALL WARRANTY OBLIGATIONS OF THE CONTRACTOR AND SHALL NOT BE APPLIED TO LIMIT ANY APPLICABLE STATUTORY PERIOD OF LIMITATION OR REPOSE. ALL WARRANTIES SHALL COMMENCE NO EARLIER THAN THE SUBSTANTIAL COMPLETION DATE OF EACH PROJECT.



§ 12.2.2.1.2 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) business days after written notice, then Owner may, upon ten (10) additional business days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

§ 12.2.2.2 The contractual one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The contractual one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.12.2, but only as to that corrected Work.

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§ 12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision for this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Construction Documents or the Contract Documents, then an equitable deduction from the Contract Sum or Guaranteed Maximum Price shall be made by agreement between Contractor and Owner.

Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

...

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. laws of the State of Nebraska, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Sarpy County, or, if no county is specified, then the county in which the Owner's main administrative office is located.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither Neither party to the Contract shall assign the Contract as a whole in whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The

~~Contractor shall execute all consents reasonably required to facilitate such assignment.~~ invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; ~~or~~ if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Notice may also be made by facsimile transmission to the last business number known to the party giving notice. In such case, notice will be deemed received upon electronic confirmation of receipt. The party making such facsimile transmission shall also forward a copy of such notice by regular mail. Each party to the Contract shall provide all other parties with the facsimile telephone number to which all official notices should be sent.

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**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public ~~authorities.~~ authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and ~~approvals.~~ approvals which shall be included in the Cost of the Work. Provided, however, Owner shall bear all costs of inspection services, ~~the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner.~~ The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. ~~The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~

**§ 13.5.1.1** Special Inspection and Special Testing in addition to the test and inspections required of the Contractor: The Owner will employ Special Inspector(s) as required by the "2006 International Building Code". The Contractor shall be responsible for coordinating, notifying, and scheduling all special inspections and special testing in order to maintain the progress of the work. The Contractor shall give the Architect and Owner timely notice of when and where special inspections and special tests are to be made so that the Architect may be present for such procedures. The Owner shall bear the costs of any special inspections and special testing performed under this subsection 13.5.1.1. The Contractor shall schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, ~~the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements then the Owner shall provide or contract for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.~~ approval. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure ~~including including, but not limited to,~~ those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect.~~ Architect with a copy to the Owner.

...

~~Payments—Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate~~

prevailing from time to time at the place where the Project is located provided by Neb. Rev. Stat. § 81-2404. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment for the Architect, if Owner's Board of Education meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Education meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

### **§ 13.7 TIME LIMITS ON CLAIMS TIME LIMITS ON LITIGATION**

The Owner and Contractor shall commence all ~~claims and causes of action~~, litigation, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the ~~final~~ dispute resolution method selected in the Agreement and within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all ~~claims and causes of action not commenced in accordance with this Section 13.7~~ ten (10) years after the date of Final Completion of the Work.

### **§ 13.8 EQUAL OPPORTUNITY IN EMPLOYMENT**

§ 13.8.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.8.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status.

### **§ 13.9 CONTRIBUTIONS UNDER NEBRASKA EMPLOYMENT SECURITY LAW**

The Contractor and all Subcontractors engaged to perform any part of the Work shall make payment to the Unemployment Compensation Fund of the State of Nebraska all contributions and interest due under the provisions of the Employment Security Law, Neb. Rev. Stat. §§ 48-601, et seq. (Reissue 1988), as amended, on wages paid to individuals employed in the performance of the Contract; and before final payment shall be made of the final three percent (3%) of this Contract, the Contractor shall secure and file with the Owner, and cause any Subcontractor to secure and file with the Owner, written clearance from the Commissioner of the Department of Labor of the State of Nebraska, certifying that all payments then due of contributions or interest which may have arisen under this Contract have been made by the Contractor or any Subcontractor to the Unemployment Compensation Fund.

### **§ 13.10 STORAGE AND DISPOSAL OF HAZARDOUS WASTE**

Fines, penalties and any other action ordered by the U.S. Environmental Protection Agency or Nebraska Department of Environmental Quality arising from the performance of the Work, but excluding preexisting site conditions, are the responsibility of the Contractor and shall not be recoverable from the Owner in any fashion.

### **§ 13.11 WARRANTY OF EXAMINATION OF CONSTRUCTION DOCUMENTS**

By signing this Agreement the Contractor does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each Contractor performing the Work shall also agree, certify, warrant and represent to the Owner that their bids have been based on a full and complete examination of the Contract Documents and Construction Documents, including as determined necessary site examination; and that all statements, facts and representations made in all submittal documents and materials are true, correct, accurate, and complete, and may be relied upon by the Owner in considering the firm's bid. The Contractor understands it is its responsibility to immediately provide updated and correct information if any of the information changes at any time. Any omission, falsification or misrepresentation made by the Contractor or a Subcontractor in such documents and materials or any supplement thereto, will be sufficient grounds for failure to employ the Contractor or terminate any contract with the Owner. The Contractor and any Subcontractor by entering into an Agreement with the Owner consents and agrees to comply at all times with all Owner policies, regulations, directives, and practices.

### **§ 13.12 VERIFICATION OF IMMIGRATION STATUS**

The Contractor agrees to use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. This requirement applies to all Subcontractors of the Contractor. The Contractor shall, by written agreement, require compliance with the federal immigration verification system by all Subcontractors. If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

### **§ 13.13 RECORDS**

**§ 13.13.1** Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within fourteen (14) calendar days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

**§ 13.13.2** If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.14.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

**§ 13.13.3** Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.14.1.

**§ 13.13.4** Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.14.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

**§ 13.13.5** In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

### **§ 13.14 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION**

**§ 13.14.1** Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

**§ 13.14.2** Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.



**§ 13.14.3** The parties acknowledge that, as a political subdivision of the State of Nebraska, Owner is subject to, and must comply with, the provisions of the Nebraska Records Management Act.

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**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of ~~30 consecutive~~ ninety (90) consecutive calendar days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

- ~~.2~~ An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- ~~.3~~ Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment ~~on a of disputed sums due on an approved~~ Certificate for Payment within the time stated in the Contract Documents; or
- ~~.4~~ The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. Documents.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 calendar days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 ~~exists, the Contractor may, upon seven~~ exists then, after the applicable time period, the Contractor may, upon twenty (20) calendar days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~including reasonable overhead and profit, costs incurred by reason of such termination, and damages. and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.~~

**§ 14.1.4** If the Work is stopped for a period of ~~60 consecutive~~ ninety (90) consecutive calendar days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~seven additional~~ twenty (20) additional calendar days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- ~~.3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ~~.4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents.
- ~~.5~~ fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- ~~.6~~ engages in worker misconduct in violation of Section 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- ~~.7~~ fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, subject to any prior rights of the surety,~~ may without prejudice to any



other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) calendar days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, ~~equipment, tools, and construction equipment and machinery equipment~~ thereon owned by the Contractor;

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**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts earned to the date of termination.

**§ 14.2.4** ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.~~

**§ 14.2.5** The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within fourteen (14) calendar days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Sections 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

**§ 14.2.6** If the Contractor is declared by the Owner to be in default under the Contract, then the Contractor's Performance Bond Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

...

**§ 14.3.2** ~~The Contract Sum and Contract Time shall be adjusted may be adjusted, by mutual agreement for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent~~

...

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Education has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

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**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed-executed and for proven unrecoverable loss with respect to materials, equipment, tools, and

construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

## **ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR**

...

A Claim is a written demand or assertion by one of the parties the Contractor seeking, as a matter of right, payment of money, interpretation of the Contract terms, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract, the Project or the Work. The responsibility to substantiate Claims shall rest with the party making the Claim. Contractor.

...

Claims by ~~either the Owner or Contractor~~ the Contractor must be initiated by written notice to the Owner and to the Architect. Claims by Contractor must be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim or within twenty-one (21) calendar days after the Contractor first knew of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice ~~to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by either party must be initiated within 21 days after titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) calendar days after the occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes claim or within ninety (90) calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is ~~later.~~ earlier, shall be waived. Contractor agrees that this is a reasonable notice requirement under Nebraska law.

...

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section ~~9-7-9.7,~~ as amended, and Article 14, as amended, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents. ~~The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM**

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum, written notice as provided herein shall be given ~~before proceeding to execute the Work.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section ~~40.4.10.5.~~ The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Education, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

...

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time will not be granted for delays caused by inadequate construction force, or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed.

§ 15.1.5.3 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal and unusually severe for the period of time, could not have been reasonably anticipated and prevented the execution of major items of work on normal working days.

§ 15.1.5.4 Time extensions for abnormal / unusually severe weather. The procedure for determination of time extensions for unusually severe weather is set forth in this Section.

§ 15.1.5.4.1 Adverse weather means atmospheric conditions at the Project location and at a definite time that are unfavorable to construction activities. For purposes of this Section, adverse weather includes one or more of the following atmospheric conditions:

- .1 Precipitation at the Project location during the 24-hour period constituting a work day in a total, cumulative amount in excess of one-half (0.5) inch of rainfall or the equivalent of one-half (0.5) inch of rainfall if precipitation is other than rainfall;
- .2 Outside temperatures at the Project location during the work hours of the work day remain below 32° F for at least 4 consecutive hours and which impact Contractor's scheduled outside work for that work day; or
- .3 Sustained winds at the Project location during the work hours of the work day remain above 25 m.p.h. for at least 4 consecutive hours and which impact Contractor's scheduled outside work for that work day.

§ 15.1.5.4.2 Adverse weather also may include "dry-out" days, if appropriate, subject to the following conditions:

- .1 There is precipitation at the Project location during the 72-hour period immediately preceding the anticipated "dry-out" work day in a total cumulative amount in excess of one (1.0) inch of rainfall or the equivalent of one (1.0) inch of rainfall if precipitation is other than rainfall; and
- .2 Exterior site conditions as a result of the prior precipitation at the Project location are anticipated to detrimentally impact site access or site work and the Contractor has taken all reasonable steps and accommodations to avoid such detrimental impact.

For purposes of this subsection, the Contractor may receive one (1) "dry-out" day for each one (1.0) inch of precipitation, provided that the site conditions are detrimentally impacted on each day. By way of example only, if there is 2.5 inches of precipitation at the Project location during the 72-hour period, the Contractor may receive two (2) "dry-out" days. "Dry-out" days are in addition to any adverse weather days for the work day in question.

§ 15.1.5.4.3 Adverse weather means weather that is more severe, in magnitude or duration or both, than bad weather which should be expected and anticipated by the Contractor for the season and the Project location.

§ 15.1.5.4.4 Actual adverse weather days means days where adverse weather, or the results of adverse weather, prevented Contractor's work on critical path Work activities for fifty percent (50%) or more of Contractor's scheduled work day.

§ 15.1.5.4.5 The following listing defines monthly anticipated adverse weather delay work days for the Contract period. Contractor's construction schedule, including the critical path schedule, during the term of the Agreement must reflect these anticipated adverse weather delay work days in all weather dependent Work activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
8	5	3	4	6	4	5	5	3	2	3	6

§ 15.1.5.4.6 Contractor must adequately and sufficiently document actual adverse weather days in Contractor reports. Adequate and sufficient documentation is such that an independent third-party, including the Initial Decision Maker and the Owner, could determine that adverse weather conditions existed and that the requirements of an actual adverse weather day were met. For purposes of clarity, charts showing only daily cumulative rainfall amounts are insufficient to adequately and sufficiently document actual adverse weather days. Contractor's failure to adequately and sufficiently document conditions to show actual adverse weather days may result in rejection of Contractor's claim.

§ 15.1.5.4.7 The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in the schedule above has been exceeded in a particular month, Contractor may submit a claim to the Initial Decision Maker for consideration.

§ 15.1.5.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control. Claims for extension of time may only be considered because of weather delays, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Only claims for extension of time shall be considered because of hindrances or delays not the fault of either Contractor or Owner, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Board approval shall be required for any extension of time. No damages shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.5.6 Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, weather day, or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.

The Contractor and Owner waive Except for those losses covered by insurance required by the Contract Documents and specific items of damages allowed for in this Agreement and in the Contract Documents, the Construction Manager and the Owner waive all Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all Contract, including consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents of this Agreement.

**§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES**

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§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect-Owner and Owner's Designated Representative or Program Manager (if any) will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Maker for Claims arising from or relating to the Construction Manager's services. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision



Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section ~~15.2.6.1, 14.2.6.1.~~

**§ 15.2.6.1** Either party may, within ~~30~~thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within ~~60~~sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then ~~both parties~~they waive their rights to mediate or pursue ~~binding~~ dispute resolution proceedings with respect to the initial decision.

...

### **§ 15.3 ~~MEDIATION~~ALTERNATIVE DISPUTE RESOLUTION**

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy~~ Any Claim arising out of or related to the ~~Contract~~ except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution. ~~Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may by mutual agreement of the Owner and Contractor, after written recommendation by the Architect or thirty (30) calendar days after submission of the Claim to the Architect, be subject to mediation.~~

**§ 15.3.2** ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~If the parties agree to resolve their Claims by mediation, such mediation shall be subject to and in accordance with the Nebraska Uniform Mediation Act. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by a mediation center approved by the Nebraska Office of Dispute Resolution.~~

**§ 15.3.3** ~~The~~ If mediation is agreed to by the parties, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Education, signed by the parties if approved by the Board of Education, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Nebraska.

**§ 15.3.4** A party may elect at anytime to resolve their claim though litigation pursuant to Section 13.1.

### **§ 15.4 NO ARBITRATION**

**§ 15.4.1** Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

**§ 15.5** Contractor stipulates that Owner is a political subdivision of the State of Nebraska, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Nebraska. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.



**SARPY COUNTY SCHOOL DISTRICT 77-0046, A/K/A  
SPRINGFIELD PLATTEVIEW COMMUNITY SCHOOLS**  
Dated this      day of January, 2020

**BOYD JONES CONSTRUCTION COMPANY**  
Dated this      day of December, 2019

OWNER (Signature)

Cori Swanson, President Board of Education  
(Name /Title)

CONSTRUCTION MANAGER AT RISK (Signature)

Tim Meyer, Sr. V.P. Operations  
(Name/Title)

**§ 15.4.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

**§ 15.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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

### **AIA® Document D401™ – 2003**

I, Rex R. Schultze, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:33:43 ET on 12/30/2019 under Order No. 5551106211 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

**Springfield Platteview Community Schools  
Board of Education Meeting  
January 13, 2019**

**Agenda Item:**

Discuss, consider and take all necessary action with regard to the construction manager at risk agreement between the School District and Boyd Jones Construction Company for the proposed construction of a new elementary school facility and renovations to the Westmont Elementary school building projects.

**Motion:**

Motion made by \_\_\_\_\_ that the Board of Education of this School District should and does hereby approve the construction manager at risk agreement between the School District and Boyd Jones Construction Company for the proposed construction of a new elementary school facility and renovations to the Westmont Elementary school building projects, in the in the form on file with official School District records and as presented at this meeting or with such changes as are deemed necessary and in the best interest of the School District and approved by the Superintendent of Schools, and further hereby delegates authority to and authorizes and directs the board president, or a designee, to sign, execute and deliver the agreement, and to take all other action necessary to carry such agreement into effect.

Member \_\_\_\_\_ seconded the Motion. After discussion and on roll call vote, the following members voted as follows:

Board Member	For	Against	Abstain
Cori Swanson			
Lisa Roseland			
Brenda Sherman			
Kyle Fisher			
Bob Icenogle			
Brian Osborn			

The above Motion having been consented to by more than a majority of the members of the School Board of this School District, was declared as passed and adopted by the President at a duly held and lawfully convened meeting in full compliance with the Nebraska Open Meetings Law.

DATED this 13th day of January, 2020.

SARPY COUNTY SCHOOL DISTRICT 77-  
0046, A/K/A SPRINGFIELD PLATTEVIEW  
COMMUNITY SCHOOLS

ATTEST:

\_\_\_\_\_  
Board Secretary

By:

\_\_\_\_\_  
Board President



14801 S. 108th St.  
Springfield, NE 68059  
402-592-1300  
[www.springfieldplatteview.org](http://www.springfieldplatteview.org)

## **Future Planning**

**Jan. 13, 2020**

1/20/20	Foundation Board Meeting 7:30 AM
1/27/20	Board Work Session 7 PM
2/9-10/20	NASB Legislative Workshop- Lincoln
2/10/20	Regular Board Meeting 7 PM/ 6:30 PM- Finance; Site 6:00 PM
2/20/20	Foundation Work Session 7:30 AM
2/24/20	Board Work Session 7 PM
2/26-27/20	Parent-Teacher Conferences 2-7:30 PM
3/6/20	Foundation Auction 6 PM @Millard Social Hall
3/9/20	Regular Board Meeting 7 PM/ 6:30 PM- Finance; 6 PM Bond Committee
3/16-20/20	Spring Break
3/20/20	Foundation Board Meeting 7:30 AM
3/23/20	Board Work Session 7 PM