Board of Education Regular Meeting
Monday, April 15, 2024 7:00 PM
Central Office Board Room
401 South Pine Street
Valley, NE 68064-0378

1. **Call to Order**
2. **Public Communications and Correspondence** **2**
3. **Approval of Agenda**
4. **Administrative Reports** **4**
   - 4.1. Superintendent's Report 26
   - 4.2. Financial Report 27
5. **Consent Agenda**
   - 5.1. Approve Minutes 34
   - 5.2. Approve Claims for Payment
   - 5.3. Approve Financial Report
   - 5.4. Approve Classified Staff
6. **New Business**
   - 6.1. Approve Request for Student Early Completion Plan 40
   - 6.2. City of Valley Annual Update with Mayor Grove 41
   - 6.3. Approve Construction Management at Risk Contract 44
   - 6.4. Approve Certificated Resignations 270
   - 6.5. Approve Certificated Staff Hiring
   - 6.6. Approve the Last Day of School for 2023-2024 School Year 273
7. **Adjournment**

Board of Education

Jamie Jorgensen

Bill Koile

Dr. Kelly Hinrichs

Elizabeth Mayer

Luke Janke

Jim Tomanek

Dr. Melissa Poloncic, Superintendent

Kristi Trost, Board Secretary

This pamphlet has been developed to help the general public attending a meeting of the Board of Education to understand the internal operation of the Board. It is hoped that this pamphlet will foster improved relations between the Board and the citizens it serves.

Meetings of the Board

When

- The Board of Education convenes once each month on the second Monday except in the months that have five Mondays. In months with five Mondays, the Board convenes on the third Monday of the month. Holidays and unexpected conflicts may create exceptions to this practice.
- The Board of Education will convene in special session whenever it is deemed necessary for the efficient operation of the school district.
- Board of Education meetings are called to order at 7:00 p.m. unless another time is stipulated.

Where

- Regular and special meetings of the Board of Education will be held in the Board Room on the Valley Campus at 401 S. Pine St., in Valley, unless another location is specifically identified.
- Whenever public participation dictates the need for a larger meeting room, the Board will convene in the High School library.

Notice of Meetings

- Official notice of the time and place of the regular board meetings are posted on the doors of the schools, banks in Valley and Waterloo and the Valley City Hall.
- Notice of special meetings will be posted at least 24 hours in advance. Hearings will be published in The Omaha Daily Record.

Business of the Board

Agendas

- Agendas for the regular meeting on the second Monday of the month will be prepared in advance and kept current and available in the superintendent's office. Business items of an emergency nature may be placed on the agenda by a majority vote of the Board of Education.
- Parents, employees and patrons may request items placed before the Board of Education for consideration by contacting the Superintendent at least three business days in advance of a regular meeting.

Public Participation

- The Board of Education invites you to offer comments during the Public Communication and Correspondence portion of the meeting. Public requesting to offer comments during the Public Communication portion of the meeting shall make a request to speak or complete the sign-in information sheet at the meeting. The individual is asked to state the purpose and general nature of his or her appearance before the Board. The Board President shall indicate to the individual how much time the Board will allot the individual. Speakers normally will be given five minutes with a maximum of 20 minutes set aside for such communications.
- Members of the public requesting to speak to an item considered New or Old Business on the Agenda will request time during the Public Communications portion of the meeting. Unless the comments are related to an agenda item no action will be taken by the Board. Questions or requests of the Board by the public will be taken under consideration. The Board will direct the Superintendent, or the Superintendent's designee, to respond in writing to any public

question or request brought before the Board. Equal time shall be allotted to individuals speaking for and against a proposal when opposing points of view are represented at the board meeting.

- The Board invites you to share any information you may have or address any question to any Board member or the Superintendent regarding new business in the week prior to the next meeting.

- If, at any Board meeting, any person shall conduct himself or herself in a disorderly manner and after notice of the president or the person presiding shall persist therein, the president or person presiding may ask the person to leave and if the person refuses, the president or presiding officer may order any law enforcement officer or any other person or persons to take him or her into custody until the meeting is adjourned.

- Meetings may be recorded. Recording must be done so as not to disrupt the meeting.

- Meetings of the Board of Education shall be conducted in compliance with appropriate policy, state statutes and open meeting laws.

Mission Statement

DC West Community Schools engages, prepares, and empowers all of our students for the future.



The Douglas County West Community Schools does not discriminate on the basis of race, color, national origin, sex, disability, religion, age or other protected status in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following persons have been designated to handle inquiries regarding the non-discrimination policies:

Students: Superintendent of Schools, 401 S. Pine St., Valley, Nebraska 68064 (402-359-2583).

Employees and Others: Superintendent of Schools, 401 S. Pine St., Valley, Nebraska 68064 (402-359-2583).

Complaints or concerns involving discrimination or needs for accommodation or access should be addressed to the appropriate Coordinator. For further information about anti-discrimination laws and regulations, or to file a complaint of discrimination with the Office for Civil Rights in the U.S. Dept. of Education (OCR), please contact OCR at 8930 Ward Pkwy, Suite 2037, Kansas City, Missouri 64114, (816) 268-0550 (voice) or (877) 521-2172 (telecommunications device for the deaf) or ocr.kansascity@ed.gov.



Board Meeting Procedures

"Engage, Prepare, and Empower"

Douglas County West Community Schools
P.O. Box 378
401 S. Pine St.
Valley, Nebraska 68064

PO Box 378, Valley, Nebraska 68064
www.DCWest.org
Phone: 402.359.2583
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Douglas County West
Middle School Board Report April 2024
Mr. Jeremy Travis

Enrollment as of 4/9/24
6th-80
7th-66
8th-91
Total DC West Middle School (237)

Can you believe that we are in Week 4 of the 4th Quarter already? Where has the time gone this school year?....We've accomplished a lot and we have a lot more still planned to accomplish throughout the remainder of the school year. It'll be fast and it'll be busy but it's always worth it for our students! Our MS Staff continues to find ways to provide fun and relevant opportunities for students to be able to make a connection, to learn, to grow, to explore, to enjoy, to collaborate, to take pride in, to participate, and to build upon their experiences. We continue to learn and grow in The Falcon Way!

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March MS Students of the Month

Left to right: 6th Grade-Max Steinbach and Maya Larmore. 7th Grade-Elias Navarrete and Addison Bohnekamp. 8th Grade-Toren Galvin and Chloe Acton. Those students exemplified The Falcon Way.



March MS Staff Members of the Month

Left to right: Ms. Amber Goddard-Special Education, Mr. Ben Steward-8th Grade Social Studies, and Mrs. Traci Evans-8th Grade Math. Those Staff Members exemplified The Falcon Way!

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DC West Middle School
@middle_dcw

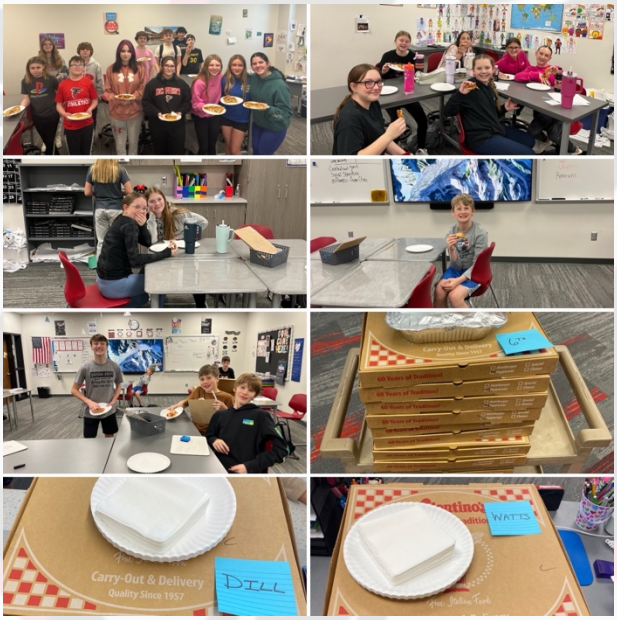
So Awesome for Mrs. Gotch's 8th Grade Art students to be featured in the Annual Arts and Holocaust Reception at the JCC Tonight! Very proud of Mrs. Gotch and all of our students! @DCWestMSArt #TheFalconWay



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NSCAS Kick-Off Breakfast for our students and staff!



Pride Attendance Challenge Winners for the 3rd Quarter. Overall, the 6th Grade had the best attendance rate at 94% with Mr. Zimmer's Pride leading the way at 95.2%. In 7th Grade, Miss Watts's Pride had 96% to lead the way, and in 8th Grade, Ms. Dill's Pride was at 95.5%. The grade level that won as well as the Pride leader for the other grades got to enjoy some pizza!

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Our **DC West PTSA** sponsored our **MS Dance** and it was a fantastic night for our students. They got to enjoy dancing, pizza, drinks, and cookies throughout the night. It was a fun environment full of high energy!



Our MS Students got the opportunity to participate in the **Solar Eclipse** viewing and seemed to enjoy it!



We hosted the first **Track Meet** of the season and our students competed very well. Our girls team finished in 2nd place overall and our boys team finished in 3rd on the day. We have 60+ students athletes representing the Falcons this Spring. Our Track coaches are Jacob Subbert, Amber Axline, Brant Loewe, and Brad Henderson.

We will continue to develop what **The Falcon Way** looks like at our Middle School. We will continue to focus on Falcons being Safe, Responsible, Respectful, Engaged, and Inclusive for us! We will continue to have daily, weekly, monthly, and quarterly student incentives for our students throughout the school year.

We are determined to continue to provide a safe and positive learning environment for all students and staff. Please feel free to contact me if you have any questions, if you want to see how things are going throughout the day, or if you have any concerns. I'm proud of what we do and who we are! Go Falcons!

Jeremy Travis, M.A.
Middle School Principal/MS AD (6-8)

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Fax Number: **402.779.2534**
"Kids don't care how much you know until they know how much you care"
#TheFalconWay #FalconStrong #DCWestROCKS #BeFALCONKind #dcwestpride

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April 2024

April is Autism Acceptance/Awareness Month!

Autism Spectrum Disorder (ASD)/Autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction. According to the CDC, 1 in 36 children across the US currently have a diagnosis of autism. This is a large increase from the year 2000, when the national rate was 1 in 150 children. Autism is one of 13 eligibility categories under which children can receive special education services in Nebraska. Across Nebraska, over 5000 children receive special education services under the Autism category, including almost 500 children from ages birth-5. Early intervention is a critical component to positive long-term outcomes for children with ASD, and we are fortunate to be able to provide high-quality services for nearly 20 children with autism from ages birth through 21 in DC West. Our staff have participated in numerous trainings from the Nebraska ASD Network over the past few years to ensure all students have access to the support they need at school. We are proud to provide services, advocacy, and acceptance for neurodiverse learners in an inclusive setting.

Staffing Update:
Due to the resignation of Nick Sims and the transfer of Ty Hansen from High School Special Education to Middle School Counselor, we are currently recruiting for two high special education positions. Nick and Ty have been wonderful members of our high school special education team, and we wish them all the best. We also have one elementary special education position open at this time. Birth-3, preschool, and the middle school are fully staffed.

Pam Dobrovolny resigned from her position as Preschool and Kindergarten Speech Language Pathologist to accept a position as a Pyramid Grant Facilitator for ESU 3. We are fortunate to have had her expertise on our team this past year. We have entered into a contract with an approved educational services provider to provide speech-language services next year. We anticipate a smooth transition as our newly contracted SLP has a strong background in early childhood speech-language.

Journey to Inclusion:
Our Targeted Improvement Plan for the next year will focus on using inclusive practices to support growth in reading achievement for our students with disabilities. Why is inclusive education so important? Research shows that students with disabilities who spend a larger portion of their school day with non-disabled peers performed significantly better on measures of language and mathematics than students who spend

less time with non-disabled peers. The regular education environment is rich with higher-level vocabulary, peer interactions, and high expectations, which helps elevate the achievement of every student in the room. We look forward to continuing our professional development journey and implementation of inclusive practices through participation in ESU 3 Journey to Inclusion/PEAK grant Cooperative next year.

School Safety Updates
We have participated in a number of trainings this year from the NDE School Safety and Security Office and have plans for continued work to update and prepare for any potential crisis or emergency in the district.

Our Crisis Team participated in Psychological First Aid for Schools (PFA-S) training in February and have plans later this month to revise and revamp our district crisis response manual to align to our training. In March, I took a team of building secretaries, interventionists, and counselors to Norfolk to participate in a Standard Reunification Method (SRM) training and simulations exercise. We have planned summer work time for our administrative team to review our Emergency Operations Plan, receive training and plan time to be prepared to activate the SRM, and to receive updates on our psychological first aid procedures. We will plan a training for all staff in the fall on these updated plans and practices. Finally, we are planning an in-district annual refresher training for our CPI team so that all CPI members are fully trained with the district's model of deescalation, restraint, and seclusion.

District MTSS Updates
Our District MTSS Leadership Team met for our fourth quarter meeting early this month. We reviewed our progress on the priorities the team identified at the beginning of the year, all of which support Strategic Goal Strategy 1.1: Implementing the Multi-Tiered System of Supports (MTSS) model with fidelity throughout the district to accelerate academic, career, and social-emotional/behavioral instruction and intervention to prepare and empower students.

The Team's priorities for the 2023-2024 school year and progress to date on these priorities include the following:

Priority	***Progress***
Development of a Data System for Behavior and Attendance.	• Elementary continues to use SWIS to log and document major and minor behavior concerns • The Middle School Attendance Improvement Team has developed an attendance data review system/schedule as part of

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	the MOEC Attendance Improvement Cohort. • The Administrative Team is collaborating with Wahoo Public Schools this summer to learn more about using EduClimber as a documentation tool.
District MTSS Website Development	• Kelsey Nabity has started a district MTSS website with plans to add information about tiered interventions for academics and behavior. We hope to roll the website out as a live site for staff sometime next year.
Behavioral Skills and Mental Health	• We plan to pilot the use of Second Step as a Tier 1 curriculum across all levels next year, with support for implementation from the Mental Health Team. • The Elementary and Middle School will both have teams trained in the Responsive Classroom model as a Tier 1 Universal Support for all students next fall. • Secondary staff received training throughout the year on Tier 1 Mental Health strategies, and all certified staff will participate in a training on staff mental health and well-being with Jen McNally on April 19.
District MTSS Problem-Solving Process	• Kelsey Nabity, Kristen Phillips, Janna Giles, Linsey Bellinger, Reagan Rosenberg, and I have been working on developing a cohesive district-led individual student problem solving process to serve as the district's Student Assistance Team for students who have not yet met district expectations in any academic or behavior area. We have developed the "Falcon Individual Problem Solving" process guidance document in draft form along with an accompanying EduClimber documentation form. We plan to finish our work this summer and roll the plan out to staff in the fall.
Understanding District and Building Data	• Dawn Marten and I presented data at the second quarter District MTSS meeting and district-level data.

Thanks you as always for your continued support. Have a great month!

Nicki Pechous
Director of Special Education

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DC West Community Schools

DISTRICT LEADERS:
Dawn Marten, Director of Learning
Nicki Pechous, Special Education Director

DC WEST ELEMENTARY:
Jeffrey Kerns, Principal
Dee Acklie, Home Visitor/Family Facilitator

Teachers:
Rachelle Shurman, Preschool
Jake Subbert, Special Education
Amy Ethen, First Grade
Crystal Peterson, Third Grade
Kelsey Nabity, Math Interventionist
Jessica Seng, Literacy Interventionist

BUFFETT EARLY CHILDHOOD INSTITUTE TEAM:
Tonya Jolley, Program Administrator
Alyssa Anson, Program Specialist

2023-24 GREATEST ACCOMPLISHMENTS

- New series of parent events—the Falcon Family Cafe—implemented to increase communication and collaboration with families
- Instructional Math Walkthrough Tool was created and implemented.
- Increased family socializations and playgroups
- 479 participants—including families, children, and local early care and education providers—attended the summer program in Valley and Waterloo
- Extended playgroups to infants and mothers
- Responsive classroom morning meetings were piloted in preschool through fifth grade



OVERARCHING DISTRICT GOAL

Our goal for the Superintendents' Early Childhood Plan for 2023–24 is to enhance the Birth Through Grade 3 Approach in order to close the achievement gap while focusing on equity, continuity, and quality for all students.

Our work will focus on the following research-based pillars:

- **School as Hub**
- **Parent and Family Support**
- **Professional Growth and Support**

LEADERSHIP EFFECTIVENESS

Goal

District and school leaders will continue to integrate research-backed components of the Birth Through Grade 3 Approach throughout the school until the Superintendents' Early Childhood Plan is viewed as "the way we do business" at DC West Elementary School

Activity

- Executive Leadership Team development
- Preschool Para Bootcamp training
- Instructional coaching
- Peer instructional walk-throughs
- Falcon Family Cafe

INSTRUCTIONAL EXCELLENCE

Goal

School leaders and staff will gain a deeper understanding of teaching the whole child and will implement best practices that align with the Birth Through Grade 3 Approach, with a focus on enhancing mathematical instructional practices and social, emotional, and behavioral learning.

Activity

- Preschool Pyramid coaching
- CLASS training
- Weekly summer socialization events
- Instructional coaching
- Peer instructional observations
- Social, emotional, and behavioral learning (SEBL) systems of support, curriculum, and screener
- Responsive Classroom training and implementation
- One School One Book program

FAMILY & COMMUNITY PARTNERSHIP ENGAGEMENT

Goal

District and school leaders, teachers, and staff will strengthen and increase the number of family and community partnerships at DC West Community Schools.

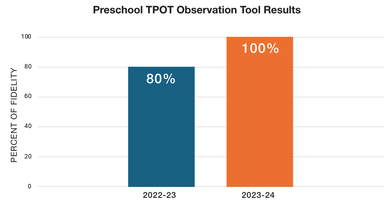
Activity

- Baby/mother play and learn groups
- Weekly preschool play groups
- Increase in personal visits
- Book checkout and literacy activities
- Infant and toddler socializations
- Summer program
- Operation School Bell

IMPACT: SCHOOL AND SYSTEM

Improved instructional practice was observed in preschool classrooms.

The Teaching Pyramid Observation Tool (TPOT) for Preschool Classrooms measures how well teachers are implementing the Pyramid Model for Promoting Social Emotional Competence in Infants and Young Children. The fidelity of implementation of the Pyramid Model in DC West's preschool classrooms increased from 2022–23 to 2023–24.

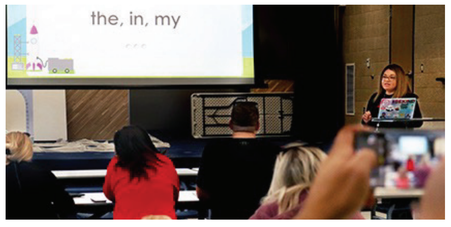


Paraprofessionals valued monthly training on the Pyramid Model.

"It has been great to have the time to problem solve any classroom struggles together." – Jen

30 families participated in the new Falcon Family Café, a monthly event where staff and families come together to learn about educational topics that were identified through a family interest survey:

October: EnVisions Math Curriculum
November: Really Great Reading K–2 Phonics Curriculum
December: Responsive Classroom - Morning Meetings
January: Falcon Family Room and Family and Student Supports
February: Fal-Coins (PBIS Reward Program)



542 students participated in Responsive Classroom Morning Meetings, which were implemented in each preschool through fifth grade classroom in 2023–24.

IMPACT: FAMILY

FAMILY WELL-BEING

Personal visits support family well-being by fostering stronger connections and access to community resources.

Family enrollment in the personal visit program increased from one family in August 2023 to six in February 2024.

Families are accessing materials to support literacy skills at home, thanks to a new early literacy program.

- 100 literacy home activities have been checked out by families of infants during personal visits, as of February 2024.
- ~150 books with literacy home activities are checked out weekly by preschool students.

Participating families value personal visits.

"Working with Dr. Dee during personal visits has given us so much reassurance about our son's development, and she has provided so many resources to help us further improve his development. Truly a wonderful program!" — Ashley G. (parent)

FAMILY-SCHOOL PARTNERSHIPS

Five babies and their families participated in monthly infant play and learn groups. New in 2023–24, these groups include children ranging from newborns to 18 months old.





Families value weekly preschool playgroups.

"My children and I have been a part of the Falcon Family Playgroup and associated activities for two years now. We were new to the town and district when we joined, and it immediately helped us to get acclimated and involved. Being a part of the program has...greatly helped with our transition to both Kindergarten and preschool. We feel very lucky to have such a wonderful program and leader in Dr. Dee." – Ashley F. (parent)

IMPACT: CHILD

CHILD WELL-BEING

13 children participated in the fall Operation School Bell event by selecting new clothing from JCPenney and new books for their home library.

SCHOOL READINESS

New summer programming for families engages community partners and supports children's school readiness.

479 participants attended the summer program in Valley and Waterloo—including families, children, and local early care and education providers.

Eight to 10 children per month participated in socialization activities facilitated by the DC West family facilitator and Valley Library staff.



ACHIEVEMENT

Instructional support in 2023–24 focused on enhancing mathematical instructional practices. This included the development and implementation of a new instructional math walk-through tool.

MAP scores for K–3 students exceeded projected growth. Two of the four K–3 grade levels showed substantial growth, and one remained at the top 90th percentile.

		Comparison Periods					
		Fall 2023			Winter 2024		
Grade (Winter 2024)	Total Number of Growth Events‡	Mean RIT Score	Standard Deviation	Achievement Percentile	Mean RIT Score	Standard Deviation	Achievement Percentile
K	72	146.7	9.8	91	157.0	9.3	91
1	66	163.9	11.3	74	179.5	11.9	94
2	55	175.7	11.4	55	186.0	11.0	63
3	88	189.5	13.6	57	195.9	12.6	48

DC WEST COMMUNITY SCHOOLS

Buffett Early Childhood Institute at the University of Nebraska

learning community DOUGLAS SARPY

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DC West Community Schools
Board Report April 2024
Dr. Dawn Marten - Director of Learning

NSCAS Growth for Grades 3-8 started this week, April 1. On March 26, all Juniors took the NSCAS ACT assessment. Once these results are released I will share them with the Board.

Throughout the last couple of months, Dr. Kerns and I have been working closely with the staff at the Buffett Insitute to capture our work with the Superintendent's Early Childhood Plan. The Elementary Executive Leadership Team, consisting of administrators, teachers, and Buffett Staff, provides feedback and insights to achieving our goals. See the next page for the poster Dr. Kerns and I will present to the Learning Community this month.

On March 5-7, I took a team of teachers and administrators to a Grading Workshop focusing on research-based grading practices. On April 19, we will have a district professional learning session focusing on the grading practice of having student grades represent achievement and demonstration of performance while finding other means to record non-academic performances such as behavior. Staff will review the current DCW methods for this practice, other school districts' methods, and learn about additional social, emotional & behavioral competencies that we strive for our students to learn and exhibit before grading from DC West Community Schools.

Superintendent	Dr. Melissa Poloncic	402.359.2583
Director of Learning	Dr. Dawn Marten	402.359.2583
Director of Special Education	Nicki Pechous	402.359.2583
Elementary Principal	Dr. Jeffrey Kerns	402.359.2151
Middle School Principal	Jeremy Travis	402.779.2646
High School Principal	Jim Knott	402.359.2121
High School Assistant Principal/AD	Nathan Ter Beest	402.359.2121

DC West Elementary School:
March 2024 Board Report
Dr. Jeffrey Kerns

DC West Elementary students participated in a week-long Drumming Residency with Sowah Mensah. Mr. Mensah is an ethnomusicologist, composer, and a “Master Drummer” from Ghana, West Africa. Thank you to the DC West PTSA and DC West Schools Foundation for making this residency possible. The drums our students are playing were made possible by financial support from NDE Fine Arts, NE Arts Council, Nebraska Culture Endowment.

Thank you to Ms. Beck for seeking out highly engaging experiences for the students of DC West Elementary. Mr. Mensah also spent time after school sharing stories from his culture and teaching staff drumming techniques.







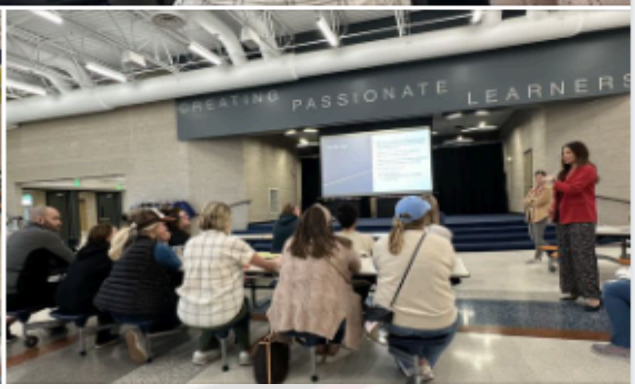


Thank you to our Falcon Families, Ambassadors from Buffet Early Childhood Institution, and Learning Community Board Members for convening with us at our April Falcon Family Cafe. Thank you to Mrs. Bellinger for presenting on how we utilize data to drive instruction and support.

Thank you to Dr. Acklie, Kelsey Nabity, and Rachel Schurman for showcasing our facilities and engaging our guests in rich and meaningful conversations. Thank you to Mrs. Jonas and Mrs. Ethen for allowing our guests to observe Morning Meetings!



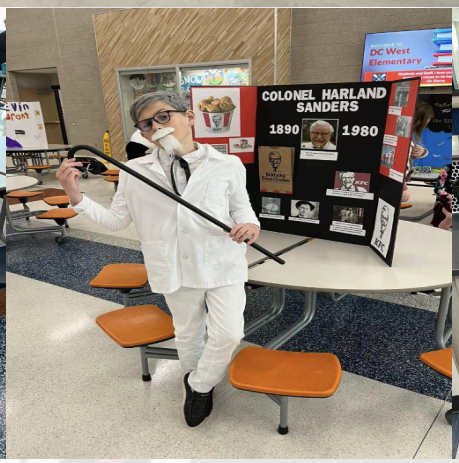


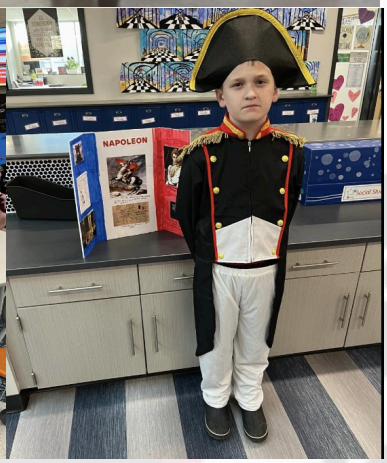


On March 27th 5th Grade Students/Teachers hosted a Wax Museum night. We had over 140 guests attend the event. Thank you to Mr. Presler, Mrs. Axline, Ms. Donohoe, and Mrs. Singer for organizing and preparing such a great event.









Music Program: 3rd Grade held their Music Program on March 28th. Students performed to a packed house! The energy from “Fight Song” blasted the roof of the gymnasium!



Students at DC West Elementary lined the hallways to support and cheer for the boys basketball team prior to their departure for the state tournament! Many of our students built relationships with the boys during our walking club before school. Thank you to team members of the boys basketball team for being positive role models.





I had the opportunity to participate in a discussion panel alongside David Jacobson. Mr. Jacobson is a national educational expert focusing on community partnerships and schools. The discussion panel took place at the Superintendent's Early Childhood Plan Convening.



DC West Preschool:

Learning in the Classroom

Each month seems to move faster than the one before and March was no exception! This month was busy and fun with Dr. Seuss, rainbows, leprechauns, eggs, and bunnies. Students collaborated on creating a large rainbow collage and Leprechaun traps. They experimented with objects that sink or float and with rainbow milk. We also closed another month with a celebration with a fun filled Egg Hunt Party! We continued to work on Handwriting Without Tears focusing on the letters P, B, R, K, A and numbers 6 & 7. Math activities included: fishing for numbers; counting gold coins; shamrock sort; and, an egg quantity match. Teacher rotations continued with Miss Rachelle's lessons focused on the emotions of mad and happy. Miss Nancy's lessons were focused on music and movement activities including instruments and Irish jigs. Miss Kelly's phonemic awareness lessons were focused on the letters J and Z. The students also had fun making and eating pudding egg nests!





New Hires:
Emma Shepard will be teaching 2nd grade for the 2024-25 school year. Emma will graduate from Midland this spring. Emma completed her student teaching experience with Mrs. Ethen in the Fall of 2023.

Mikayla Olson will be teaching 4th grade for the 2024-2025 school year. Mikaya brings three years of teaching experience to DC West next year. She will be moving east from Scottsbluff later this summer.

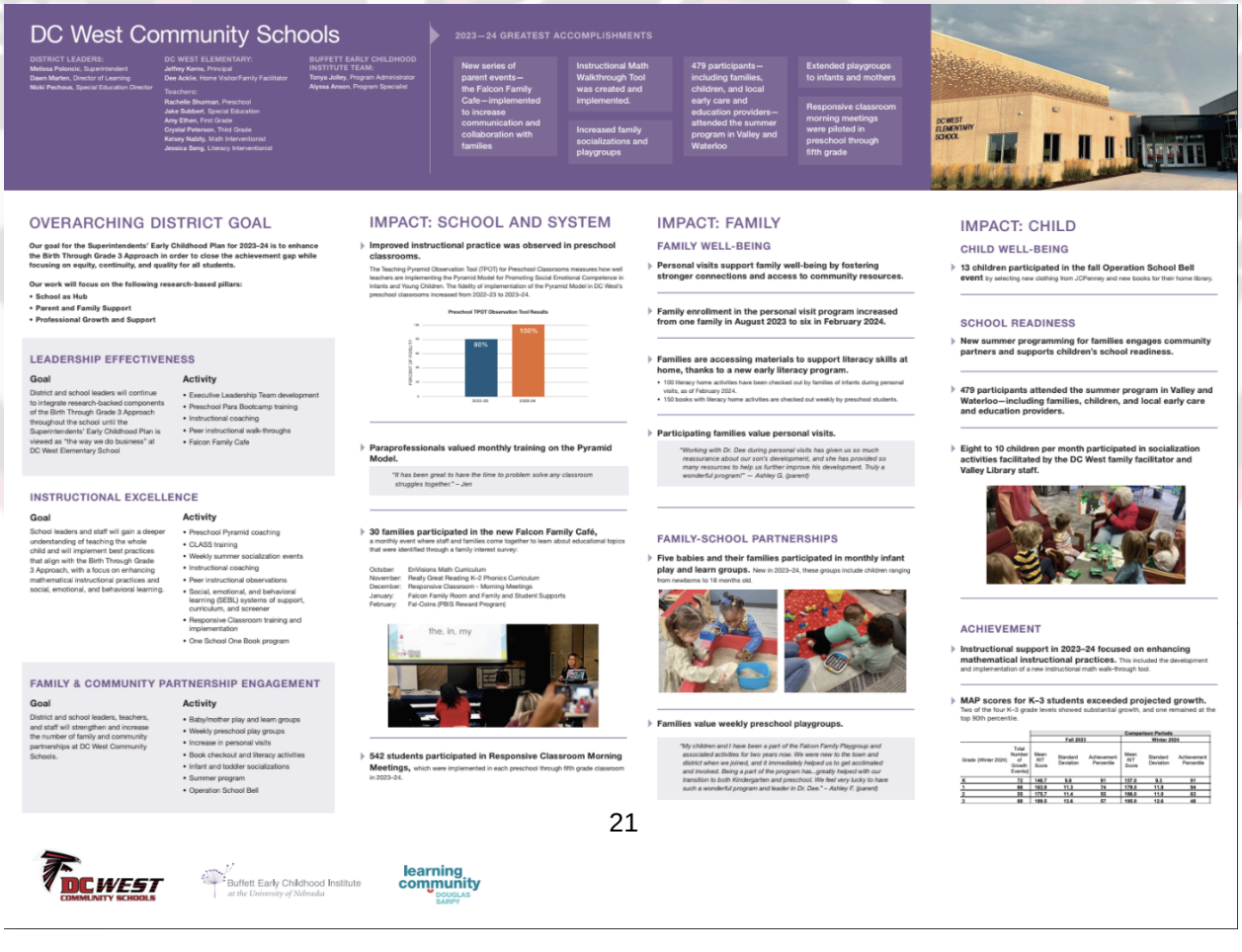
Thank you to Dr. Poloncic and our Board of Education for approving Jenifer Erdman to a full time media position at the elementary school. This increase in FTE allows our students greater exposure to media/library resources, our teachers to have common planning time, and provides increased access for our students to our school counselor.

Responsive Classroom Training

I will be taking a 2nd wave of staff members to Responsive Classroom training this summer. The following staff members will attend a four day training in Kansas with me in early June: Alan Sarka, Amy Ethen, Riley Toelle, Maggie Bottorff, Megan Nolasco, Reagan Rosenberg, Kristen Reeves, Rachelle Schurman, Sam Shepard, and Taytum West.

The focus of the Elementary Core Training will be to Learn to create a safe, joyful, and engaging learning environment ideal for student success and growth.Responsive Classroom is an evidence-based approach to teaching that is deeply rooted in social-emotional learning and focused on engaging academics, positive community, effective management, and developmental awareness. Our staff will learn to create safe and joyful learning communities where every student can thrive—while helping our students develop strong social, emotional, and academic skills.

Next Month Dr. Marten and I will be presenting to the Learning Community. We will be sharing and highlighting our strategic plan, milestones, and community partnerships.



DC WEST Community Schools
PO Box 378, Valley, Nebraska 68064
www.DCWest.org
Phone: 402.359.2583
Fax: 402.359.4371

Jim Knott – High School Principal
Douglas County West High School

Board Report
April 15, 2024

As we approach the end of the school year, many important events are either happening or are on the horizon at the high school. We recently finished administering the state-required Nebraska ACT on March 26. Eighty-one out of eighty-three juniors arrived on time and ready to test that morning - an accomplishment in itself. The two students that were absent made up the test on April 9. Thanks go out to our ACT team of Dr. Dawn Marten, Ron Michael, Nikki Billedeaux, John Brockhaus, Maggie Dailey, Jared Wiemer, Lisa Leonard, Alyssa Lindahl, Sean Pralle, and Cyndi Thomas. The amount of time this group spent organizing and administering the test according to strict ACT standards is definitely appreciated. We should receive preliminary ACT results before the end of the school year.

On Saturday, March 30, Prom was held at the "A View Event Center" on West Shores Lake. Thanks go out to Steve and Brandi Goldapp for the generous donation of the prom venue. The theme was "Tangled" and was open to all DC West Juniors, Seniors, and their individual guests. Post-prom was sponsored by the Junior Parents and was held from 11:00PM - 2:00AM at Omaha Sports and Games Company. We would also like to thank Lindsey Boardman, Maggie Dailey, Jenny Finck, Barb Feldhacker, Nathan TerBeest, and Deputy Paulison for all of their help organizing and supervising the Prom.

We recently interviewed and hired for two HS positions for next year. They are listed below. There are also two High School Special Education positions currently open.

1) HS Counselor – Hired Katie Richards – Ms. Richards is originally from Ashland and attended the University of Nebraska, Lincoln. She taught Family and Consumer Science for four years at Giltner High School and was the Middle School Guidance Counselor at DC West this school year. Along with her counseling duties, she will teach three sections of College Preparation in the fall.

2) HS Math – Hired JD Gagner – Mr. Gagner is originally from Sitka, Alaska, student taught math with Ms. Cox at DC West, and graduated from Midland University in the spring of 2023. He was hired by DC West Middle School to teach STEM this year and will be moving to the High School Math Department next year. He will teach Algebra I, Algebra I Support, and Pre-Algebra.

The third quarter honor roll is attached to the second page of this report.

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Quarter 3 Honor Roll of Distinction 2023-2024

SENIORS

Eric Asher *
Paige Bias-White *
Laney Bissaillon *
Anna Borner *
Brandon Christensen *
Brook Cooke *
Savannah Grabenstein
Gage Gratopp *
Hemeny Gutierrez
Grace Holm *
Elizabeth Jensen- Robinson *
Caleb Johnson
Harley Kaven *
Cheyenne Kilmer
Megan Kopocis *
Kale Kotil
Aubree Liss
Ellie Lloyd
Daniel Luna-Garza *
Terry Luthy III *
Maria Malousek
Olivia Malousek *
Nathan Martin
Zachary McArdle *
Jonas Meairs-Richman
Jaylee Negley *
Taylor Patterson
Angelina Ramos Garcia
Raya Sattem *
Ashton Scott
Carley Shaw
Madison Taft *
Zachary Uehling
Kylee Vaughan
Ryker Wohlers
Charles Wood
Jack Woodward
Lily Wright *

JUNIORS

Karsten Alexander
Sydney Atkins
Jamison Badje
Jaeda Bakken *
Will Bergsten
Kelan Bohlen *
Tieler Collette
Trent Davidson *
Carleigh Dembinski *
Jagger Denker
Lyla Elsaesser
Huston Farrens
Alexis File *
Austin Fletcher
Robert Graves IV
Ramses Graves
Chloe Greve
Ava Grimm *
Aidan Heim
Stella Higginson
Brody Hillyer *
Bryar Jensen
Catherine Johnson
Remy Kirby *
Miles Korb
Gavin Lakner *
Bryce Larsen *
Cameron Madden
Grant Mayer
Colton Meduna
Madelyn Mitchell *
Sarah Perkons
Carli Ptacek
Evan Steele
Mitchell Sullivan *
Zoe Teitler *
Kayden VerMaas
Brody Walsh
Colton Willmott
Dakota Wolter
Maddison Zach

SOPHOMORES

Bailey Anderson
Bella Anderson
Nolan Asher *
Kayden Foster
Joslyn Giles
Ian Gleason
Nylee Hayner
Adora Hays-Lavender
Tess Henrichs
Barrett Hinrichs
Maren Jarecke
Emma Kincanon *
Cade Listenberger
Damian Monroe
Kolten Nelson
Amelia North
Benjamin Oien
Trey Olsen
Mason Pettit
Alexander Phillips *
Madelyn Phillips *
Anella Pralle *
Abby Rayer
Kyler Rippe
Jetta Sattem
Trey Schieber *
Waylon Schroeder *
Jackson Schuiteman *
Joseph Stammer
Addison Strong *
Jaxon Swierczek *
Jadie Vieth
Jasmine West
Beau Wilcox
Rowan Williams
Evan Winters
Zane Wohlers *
Izzabella Zach

FRESHMEN

Hailey Albrecht *
Trent Alexander
Liliana Balus
Noelle Beyl *
Peyton Bias-White
Lydia Bonacci
James Bussen
Allyson Cooke *
Brynlee Dasher
Casey Dembinski
Hayden Gottsch
Julian Gottsch
Angel Hernandez
Kami Herrington
Eva Hert
Scarlett Higginson
Brayton Holding *
Hunter Holding *
Halaina Hunter
Adisan Jeffrey
Emma Kopocis *
Tucker Korb
Lillian Lakner *
Jack Landauer
Falon Mathes
Jesse Mentzer
Kinley Nelson
Carina Ray
Aubree Richards
Ryder Songer
Katelyn Stanton
Carson Stanzel
Gage Travis
Aspen VerMaas *
Talia Walsh *
Ava Walvoord
Brody Wiese
Ella Wiese *
Sindee Zook

DC WEST
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Engage, Prepare, and Empower

Quarter 3 Honor Roll of Merit 2023-2024

SENIORS	JUNIORS	SOPHOMORES	FRESHMEN
Ty Bevington	Jackson Denker	Kyle Gregurich	Garrett Blunt
Levent Capan	Markus Dorson	Saybra Hermanson	Amalia Braun
Michael Croom	Trenton Guardipee	Caiden Hoops	Mikayla Cappello
Lillyan Duncan	Brayden Hayden	Kai Jorgensen	Will Dugan
Darby Giles	Lily Herman	Blaine Martin	Emily Fletcher
Hudson Jarecke	Aspen Huber	Molly Moehling	Hudson Harlow
Alexandria Johnson	Kiya Johnson	Grant Parr	Johanna Luthy
Lukas Johnson	Caiden Marksmeier	Colton Trost	Anthony Neto Almenares
Payton Lawler	Roen Murdock	Paul Valadez	Yhosvel Perez Pages
Aspen LeCureux	Samuel Musson		Chloe Saathoff
Jayden Paulson	Grant Scott		Dalton Schnatz
Will Reeves	Luke Thimmesch		Mallory Shaw
Brady Singer			Lane Smith
Makynna TenEyck			Wyatt TenEyck
Cameron Wiese			Remington White
Mesfin Wilson			
Antwan Wright			

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Engage, Prepare, and Empower

April Board Report

I got to go to my first baseball game yesterday where I did not have to dig out my winter coat! It was a beautiful day to play baseball at the Legion Field. It was even better when the Falcon's defeated Raymond Central. The baseball team is off to a great start and they are finding their rhythm as a team. Baseball always starts off so cold but me my assessment, they get to end the season in some of the best weather Nebraska has to offer. Good luck to the baseball team on their season!

DC West boys and girls track team are also off and running (no pun intended). We hosted our DC West invite on April 4th and hosted 32 teams at the event. It went very smooth and was a great day for both the boys and girls team. Boys ended up winning the invite and the girls got runner up. DC West will also be the host site for the NCC track meet this year which only happens once every 9 years. Our coaches and students do a great job representing our school.

This past weekend, DC West student performed in the spring play titled *The Play That Goes Wrong*. It was a fantastic performance and it was great to see the dedication of the actors to their roles on the stage. I also must add that I laughed for the majority of the play as it was hilarious. My son told me his ribs hurt the next morning when he woke up because he was laughing so hard. Kudos to Sherry Dill and Dawn Beyl for their hard work on the spring play. I will also say it was incredible to be in the Performing Arts Center for the play. It is truly a great environment for the arts.

Finally, I actually just returned from Raymond Central where I was visiting the conference art show. Mr. Pralle has students submit pieces they like to be categorized and judged at this event. DC West had 8 pieces place this year in some pretty stiff competition. Part of the art show involves inviting an artist to come work with a group of students on a project while their art pieces are being judged. The students reported they really were enjoying the day and love to be around and talk to students from other schools. Well done to Mr. Pralle and his wonderful art students.

Respectfully Submitted-
Nathan Ter Beest
Assistant Principal/Activities Director

DC WEST Community Schools
Engage, Prepare, and Empower

Superintendent's Report
April 15, 2024

HUMANeX Engagement Surveys
We are in the process of conducting engagement surveys for all staff, students grades 3-12, and all parents. The reports will be available shortly after the closing of the surveys so that we may use the data to have discussions as a staff of what we are doing well along with where we have opportunities for improvement. We will have the aggregated data reports to share with you at the Board meeting in May. We look forward to seeing the input our staff, students and parents provide.

July Board Meeting
I am planning to attend a leadership conference in July over the 15th. I would like to reschedule the meeting to either the Monday prior (8th), Thursday the 18th, or another date suggested.

County Attorney Complaint
Our legal counsel has assisted in our response to the formal complaint filed with the County Attorney's Office on the open meetings act in our October meeting. We await the County Attorney's review of our response. I will continue reporting any action in this matter to the Board.

Superintendent Goals 2024
- Lead the vision and support needed to implement strategic plan priorities & Superintendent goals in 2024 and provide more timely, ongoing, and detailed information about progress to the Board of Education.
- Engage in the design, development, and construction of the new outdoor facilities complex.
- Complete the adoption and implementation of a new certified staff and administrator evaluation system as well as implement new electronic management for personnel evaluation.
- Continue to unify building leadership and communicate to all levels consistently.
- Research, study, and implement strategies to manage the growth of the communities and district in the next five to ten years so we are proactive rather than reactive. This may include a facility and enrollment study.
- Keep abreast of regular building and grounds issues as the campus expands.

Upcoming Dates:
April 19~ No School, Teacher Professional Development
April 24, 6:30 pm~ High School Leadership Dinner
May 12, 2:00 pm~ Graduation
May 13, 7:00 pm~ Regular Board of Education Meeting

Financial Recap March 2024

	3/1/2024	Receipts	Expenditures	3/31/2024
General Fund	$3,787,104.20	$1,282,171.40	$1,210,124.00	$3,859,151.60
Depreciation Fund	$1,816,419.74	$4,227.08	$6,700.96	$1,813,945.86
Food Service Fund	$94,882.17	$87,139.02	$68,328.30	$113,692.89
Qualified Capital Fund	$110,290.87	$36,195.79	$0.00	$146,486.66
Bond Fund	$734,571.35	$85,338.88	$0.00	$819,910.23
Special Building Fund	$463,857.30	$155,759.83	$0.00	$619,617.13
- Special Bldg (MS/Fine Art)	$0.00	$0.00	$0.00	$0.00
	$7,007,125.63	**$1,650,832.00**	**$1,285,153.26**	**$7,372,804.37**

General Fund Detail

Expenditures	March	YTD	Budgeted
All Instructional Program	$ 562,088.55	$ 4,149,011.06	$ 7,920,584.00
SPED Instructional Program	$ 180,011.17	$ 1,231,542.12	$ 2,275,632.00
Support Services SPED Related	$ 33,295.44	$ 233,104.26	$ 403,158.00
Support Services Non-SPED Related	$ 45,200.87	$ 298,138.56	$ 484,821.00
Support Instructional	$ 40,693.83	$ 371,125.91	$ 856,582.00
Board of Education	$ 17,389.63	$ 54,251.08	$ 92,700.00
Executive Administration Services	$ 27,022.84	$ 227,531.58	$ 399,286.00
District Legal Services	$ 5,707.62	$ 25,554.53	$ 35,000.00
Office of the Principal	$ 67,070.60	$ 475,091.20	$ 828,608.00
General Admin - Business Services	$ 18,576.59	$ 167,446.99	$ 311,452.00
Maint & Operation of Building & Sit	$ 99,173.83	$ 1,118,888.22	$ 1,795,631.00
Vehicle Acquisition & Maint	$ -	$ 4,200.00	$ 15,200.00
Regular Pupil Transportation	$ 46,545.47	$ 281,491.99	$ 505,400.00
SPED Pupil Transportation	$ 9,266.32	$ 68,980.97	$ 173,760.00
Categorical Grant from Coporation	$ 8,566.62	$ 63,330.22	$ 134,908.00
State Categorical Programs	$ 10,747.02	$ 77,617.03	$ 146,804.00
Federal Programs	$ 37,939.00	$ 234,333.08	$ 418,024.00
ESSER II & III	$ 828.60	$ 38,430.24	$ 439,612.00
	$ 1,210,124.00	**$ 9,120,069.04**	**$ 17,237,162.00**

Revenues	March	YTD
Personal and Prop Taxes	$ 352,206.20	$ 2,335,997.79
Carline Tax	$ -	$ 123,495.16
Motor Vehicle Taxes	$ 102,513.29	$ 672,838.18
Facility Rental	$ -	$ 700.00
Tuition Received from Individuals	$ 7,065.50	$ 66,267.64
Interest	$ 5,218.56	$ 29,815.90
Local License Fees	$ -	$ 4,794.00
Other Local Receipts	$ 1,009.31	$ 109,761.28
Grants from Corporations/Private	$ (1,602.84)	$ 16,461.42
County Fines and License Fees	$ 3,954.50	$ 13,274.37
ESU Receipts	$ -	$ 4,793.00
State Aid	$ 274,478.00	$ 1,921,346.00
Special Education Programs	$ 189,114.00	$ 752,789.00
Special Education Transportation	$ -	$ -
Homestead Exemption	$ 24,413.25	$ 24,413.25
Pro-Rate Motor Vehicle	$ -	$ 7,115.30
High Ability Learners	$ -	$ 9,498.00
Early Childhood Grant	$ -	$ 62,459.21
State Apportionment	$ -	$ 176,350.84
Other State Receipts	$ -	$ -
Prop & Personal Property Tax Credit	$ 297,154.49	$ 297,154.49
Title ESSA Programs	$ -	$ -
IDEA Programs	$ 9,700.00	$ 261,978.00
Medicaid	$ 10,917.14	$ 28,520.54
ESSER II & ESSER III	$ -	$ 330,502.00
Other Federal Categorical Receipts	$ 6,030.00	$ 6,030.00
Sale of Property	$ -	$ 45,640.75
Insurance Adjustment	$ -	$ -
	$ 1,282,171.40	**$ 7,301,996.12**

March 2024 Payroll

Net Payroll	$ 588,728.31
Payroll Taxes (District)	$ 63,353.11
Payroll Withholding (Employees)	$ 147,704.67
Retirement (District)	$ 79,022.22
Retirement Withholding (Employees)	$ 78,239.82

Activity Fund Balance Report - Summary - Exclude Encumbrances
03/2024 - 03/2024

Regular; Beginning Month 03/2024; Processing Month 03/2024; Accounts to Include Accounts with Activity; Fund Number 05, 12

Fund: 05 ACTIVITY FUND

Chart of Account Number	Chart of Account Description	Beginning Balance	Expenses	Revenues	Balance Change	Balance
05 704	INTEREST	1,955.31	0.00	109.45	0.00	2,064.76
05 704 1001	ACTIVITY PASSES	13,327.14	0.00	0.00	0.00	13,327.14
05 704 1002	CORPORATE SPONSORSHIPS	3,268.99	0.00	0.00	0.00	3,268.99
05 704 1003	INSTRUMENTAL MUSIC	630.92	0.00	0.00	0.00	630.92
05 704 1005	STAFF LOUNGE	1,749.89	0.00	34.26	0.00	1,784.15
05 704 1007	VALLEY WAY	14,882.00	1,750.00	0.00	0.00	13,132.00
05 704 1011	PTSA DONATION	4,117.70	0.00	0.00	0.00	4,117.70
05 704 1022	SENIOR CLASS	191.62	0.00	18.00	0.00	209.62
05 704 1023	PROM	3,818.68	0.00	2,220.00	0.00	6,038.68
05 704 1102	ARTS & HUMANITIES	784.33	163.00	0.00	0.00	621.33
05 704 1104	ATHLETICS HS	8,452.53	474.00	703.00	0.00	8,681.53
05 704 1106	BASEBALL TEAM	1,562.98	0.00	0.00	0.00	1,562.98
05 704 1107	BAND	1,431.45	0.00	60.00	0.00	1,491.45
05 704 1108	CHEER	1,977.16	0.00	0.00	0.00	1,977.16
05 704 1111	BBB TEAM	44.17	0.00	0.00	0.00	44.17
05 704 1112	CONCESSIONS	39,190.74	2,205.31	0.00	0.00	36,985.43
05 704 1113	CONSTRUCTION TECH	7,106.79	0.00	0.00	0.00	7,106.79
05 704 1114	DANCE TEAM	1,815.95	0.00	0.00	0.00	1,815.95
05 704 1116	DRAMA	4,493.48	0.00	0.00	0.00	4,493.48
05 704 1117	FBLA	2,288.72	270.00	0.00	0.00	2,018.72
05 704 1118	HIGH SCHOOL	18.74	0.00	0.00	0.00	18.74
05 704 1119	DC TECH 1:1	35,615.18	467.95	60.00	0.00	35,207.23
05 704 1120	GBB TEAM	3,894.94	0.00	0.00	0.00	3,894.94
05 704 1123	HOSA	3,643.62	40.00	5.00	0.00	3,608.62
05 704 1124	STUCO HS	3,323.50	750.70	264.00	0.00	2,836.80
05 704 1128	NATIONAL HONOR SOCIETY	1,603.38	0.00	0.00	0.00	1,603.38
05 704 1131	FOOTBALL TEAM	1,957.22	0.00	279.12	0.00	2,236.34
05 704 1132	SCIENCE CLUB	349.19	0.00	65.00	0.00	414.19
05 704 1133	SPEECH TEAM	2,783.63	208.75	57.50	0.00	2,632.38
05 704 1134	VOCAL MUSIC	4,291.74	0.00	0.00	0.00	4,291.74
05 704 1136	WORLD LANGUAGE CLUB	304.27	0.00	0.00	0.00	304.27
05 704 1137	ROBOTICS TEAM	3,369.08	0.00	0.00	0.00	3,369.08
05 704 1141	GOLF TEAM	84.88	0.00	0.00	0.00	84.88
05 704 1142	YEARBOOK HS	2,615.57	0.00	0.00	0.00	2,615.57
05 704 1151	CROSS COUNTRY TEAM	1,975.43	0.00	0.00	0.00	1,975.43
05 704 1161	SOFTBALL TEAM	3,427.50	0.00	0.00	0.00	3,427.50

Regular; Beginning Month 03/2024; Processing Month 03/2024; Accounts to Include Accounts with Activity; Fund Number 05, 12

Fund: 05 ACTIVITY FUND

Chart of Account Number	Chart of Account Description	Beginning Balance	Expenses	Revenues	Balance Change	Balance
05 704 1166	BOYS TRACK TEAM	327.33	0.00	0.00	0.00	327.33
05 704 1167	GIRLS TRACK TEAM	800.69	0.00	0.00	0.00	800.69
05 704 1176	VOLLEYBALL TEAM	2,225.59	0.00	40.00	0.00	2,265.59
05 704 1186	WRESTLING TEAM	895.67	0.00	0.00	0.00	895.67
05 704 1198	SUMMER SPORTS CAMPS	598.12	0.00	0.00	0.00	598.12
05 704 1199	CHANGE BAGS	(1,620.00)	0.00	0.00	0.00	(1,620.00)
05 704 1222	SCIENCE GRANT	3,055.68	0.00	0.00	0.00	3,055.68
05 704 1224	STUCO MS	12,581.19	818.00	908.82	0.00	12,672.01
05 704 1225	COFFEE CART - EL SPED	1,551.40	0.00	0.00	0.00	1,551.40
05 704 1319	DISNEY MUSICAL	15,203.93	0.00	0.00	0.00	15,203.93
05 704 1320	PRESCHOOL	9,282.25	3,445.61	6,275.00	0.00	12,111.64
05 704 2112	MS CONCESSIONS	3,150.06	86.32	(459.82)	0.00	2,603.92
05 704 2121	MS BBB TEAM	211.05	0.00	0.00	0.00	211.05
05 704 2136	MS FOOTBALL TEAM	368.47	0.00	0.00	0.00	368.47
05 704 2201	ART CLUB MS	207.14	0.00	0.00	0.00	207.14
05 704 2204	ATHLETICS MS	(656.00)	390.00	240.00	0.00	(806.00)
05 704 2205	UNIFIED SPORTS	955.53	286.96	37.00	0.00	705.57
05 704 2216	MS DRAMA	386.97	310.50	20.00	0.00	96.47
05 704 2218	MIDDLE SCHOOL	1,136.22	990.18	782.00	0.00	928.04
05 704 2242	MS YEARBOOK	3,639.84	0.00	0.00	0.00	3,639.84
05 704 3220	ELEM FIELD TRIP	3,860.69	(192.50)	0.00	0.00	4,053.19
05 704 3221	PBIS/FALCOIN	2,953.56	0.00	0.00	0.00	2,953.56
05 704 3318	ELEMENTARY	4,736.89	885.67	887.49	0.00	4,738.71
	Fund Total: 05	248,200.69	13,350.45	12,605.82	0.00	247,456.06

Regular; Beginning Month 03/2024; Processing Month 03/2024; Accounts to Include Accounts with Activity; Fund Number 05, 12

Fund: 12 STUDENT FEES

Chart of Account Number	Chart of Account Description	Beginning Balance	Expenses	Revenues	Balance Change	Balance
12 704	STUDENT PARTICIPATION FEE	23,343.98	0.00	0.00	0.00	23,343.98
	Fund Total: 12	23,343.98	0.00	0.00	0.00	23,343.98

Vendor Name	Vendor Description	Amount
Checking Account ID 1	Fund Number 01 GENERAL FUND	
360 COMMUNITY SERVICES		3,369.28
AMAZON CAPITAL SERVICES		1,888.37
APPLE COMPUTER INC		256,485.00
ASCENT POLE RENTAL		305.00
AUL SPECIAL PAY TRUST		4,166.50
AWARDS UNLIMITED INC		238.51
BOYS TOWN		9,500.00
BSN SPORTS LLC		2,648.51
BUREAU OF EDUCATION & RESEARCH		279.00
CENTER FOR RESPONSIVE SCHOOLS, INC		6,872.00
CINTAS CORP		269.37
CITI CARD - COSTCO		412.71
CITY OF VALLEY		585.85
CLARIDGE PRODUCT & EQUIPMENT, INC		4,992.07
CONTROL DEPOT		299.35
COX BUSINESS		36.57
DAILY RECORD, THE		392.66
DC WEST FOOD SERVICE		879.12
DIETZE MUSIC HOUSE		212.60
EDUCATIONAL SERVICE UNIT #3		5,706.04
EGAN SUPPLY CO		2,632.12
FIBER PLATFORM, LLC		560.78
FIRST STUDENT		48,915.10
FREMONT ELECTRIC INC		260.00
GOODWIN TUCKER		300.00
HEARTLAND PEST CONTROL		260.00
HOMETOWN LEASING		2,522.27
HORACE MANN LEAGUE OF THE USA		175.00
INTELLINETICS, INC		475.00
INTERNATIONAL E-Z UP, INC		3,537.49
JOSTENS INC		13.70
JUST FOR KIDS THERAPY INC		9,413.25
JW PEPPER & SONS		568.99
KERNS, JEFF		17.40
KNOTT, JAMES		44.00
KV CONSTRUCTION INC		500.00
MATHESON TRI-GAS INC		37.44
MECHANICAL SALES INC		378.00
MENARDS - ELKHORN		774.20
NCS PEARSON INC		770.00
NE COUNCIL OF SCHOOL ADM		75.00
NEBRASKA AIR FILTER		2,964.04
NEBRASKA ASCD		40.00
NEBRASKA SAFETY CENTER		100.00
ODEY'S INC		12,803.70
OMAHA WORLD-HERALD		2,700.00
ONE SOURCE		116.00
PAPER 101		2,812.00
PAULISON, KENNETH		400.00
PERRY GUTHERY HAASE & GESSFORD		8,284.04
PUBLICATION PRINTING		2,571.23
REMEDY ROAD, LLC		5,750.64
RMD PROMOTIONS LLC		1,500.00
SCENARIO LEARNING, LLC		4,577.00
STANZEL'S MOW & SNOW LLC		3,510.00

Vendor Name	Vendor Description	Amount
STAPLES ADVANTAGE		77.11
TIMECLOCK PLUS, LLC		4,875.00
TRAVIS, JEREMY		37.98
VALLEY ACE HARDWARE		333.58
VALLEY CORPORATION		2,346.93
VALLEY WATERLOO BUSINESS ASSOC		85.00
VERIZON		90.12
WASTE CONNECTIONS OF NEBR, INC		1,140.39
WATER ENGINEERING INC		302.50
WESTERN PSYCHOLOGICAL SERVICES		131.99
WEX BANK		75.00
WOODRIVER ENERGY LLC		12,700.37
Fund Number 01		442,092.87

Checking Account ID 2	Fund Number 02		DEPRECIATION	
DOLLAMUR				17,350.00
Fund Number 02				17,350.00

Checking Account ID 6	Fund Number 06		NUTRITION FUND	
CASH-WA DISTRIBUTING				13,299.18
CHESTERMAN CO				474.69
CINTAS CORP				529.83
HILAND DAIRY				4,741.66
SYSCO LINCOLN				7,394.64
US FOOD INC				8,821.48
Fund Number 06				35,261.48

Vendor Name	Vendor Description	Amount
Checking Account ID 1	Fund Number 01 GENERAL FUND	
ACH BANK FEE		61.75
ARROW STAGE LINES		1,573.00
ASHLAND-GREENWOOD HIGH SCHOOL		48.00
BLAIR COMMUNITY SCHOOLS		125.00
COX BUSINESS		157.99
ELKHORN NORTH HIGH SCHOOL		48.00
HEARTLAND PEST CONTROL		240.00
KERNS, JEFF		44.03
LOVE'S TRAVEL STOPS & COUNTRY STORE		1,396.78
MADISON NATIONAL LIFE INS CO IN		2,877.40
MAGIC WRIGHTER E-SERVICE		236.50
MENSAH, SOWAH		6,000.00
NSAA DISTRICT II		490.00
OMAHA PUBLIC POWER DISTRICT		19,656.17
PLATTEVIEW HIGH SCHOOL		296.00
RAYMOND CENTRAL HIGH SCHOOL		359.06
SCHOOL PSYCH AI		164.89
VERIZON		90.12
WALMART COMMUNITY		134.19
WELLS FARGO BANK		11,019.08
WEX BANK		24.39
WOODRIVER ENERGY LLC		11,228.17
ZOOM VIDEO COMMUNICATION, INC.		8.27
Fund Number 01		56,278.79
Checking Account ID 6	Fund Number 06 NUTRITION FUND	
CINTAS CORP		27.12
Fund Number 06		27.12

MINUTES OF THE REGULAR MEETING OF THE BOARD OF EDUCATION OF DOUGLAS COUNTY SCHOOL DISTRICT 28-0015, a/k/a, DOUGLAS COUNTY WEST COMMUNITY SCHOOL DISTRICT
Monday, March 11, 2024

The regular meeting of the Board of Education, District #15, in the County of Douglas, in the State of Nebraska, was convened in open and public session on Monday, March 11, 2024 at the Central Office Board Room, 401 South Pine Street, Valley, NE 68064-0378.

Following public notification procedures approved by the Board of Education, February 14, 2011, in adherence to 84-1411, notice of the meeting was given in advance thereof by posting such Notice on the exterior front door of the high school, elementary school, middle school, Valley City Hall, First Nebraska Bank, and Foundation One Bank. Notice of the meeting was simultaneously given to all members of the Board of Education. Availability of the agenda was communicated in advance notice and in the notice to the Board of Education of the meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

Attendance Taken at 7:00 PM.

Kelly Hinrichs:	Present
Luke Janke:	Present
Jamie Jorgensen:	Present
Bill Koile:	Present
Elizabeth Mayer:	Present
Jim Tomanek:	Present

Present: 6.

1. Call to Order
The agenda, listing items for consideration by the Board, is on file in the Superintendent's office. Other matters may come before the Board and the Board has the right to modify the agenda before the meeting.

President – "As I call the meeting to order I wish to inform everyone present that a current copy of the Open Meetings Act is posted on the back wall of the Board Room for your review at any time."

2. Public Communications and Correspondence
Comments from the audience were accepted at this time. Correspondence addressed to the Board was presented.

Georgene Gottsch presented the Board a flyer with information regarding a "Valley Candidate Meet and Greet" hosted by the Valley Community Historical Society.

The Board was also presented a letter that received a from the Douglas County Attorney's office regarding a complaint that was filed regarding the Open Meetings Act.

3. Approval of Agenda
Motion to approve agenda as presented Passed with a motion by Luke Janke and a second by Kelly Hinrichs.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

4. Administrative Reports

Board Member Bill Koile thanked Dr. Kerns for his work on the Elementary Assistant Principal interview process. He also commended Dr. Marten on her grant work.

4.1. Superintendent's Report

4.2. Financial Report

5. Consent Agenda

Motion to approve Consent Agenda Passed with a motion by Jamie Jorgensen and a second by Jim Tomanek.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

5.1. Approve Minutes
Regular Meeting Date: 02/12/24
Special Meeting Date:

5.2. Approve Claims for Payment

5.3. Approve Financial Report

5.4. Classified Staff:
Ashley Wurth- Exit Elem Sped Para
Samantha Scheinost- Hire Custodial

6. Old Business

6.1. Building and Grounds Update
The Buildings and Grounds Committee and administration have worked on the following items and had updates for the entire Board:

- The Construction Management at Risk Selection Process
  - 6 proposals were received (Boyd Jones, MCL, Hausmann, Mammoth, Nemaha, & Meco-Henne)
  - 2 firms have been selected for interviews on March 12th. (MCL & Hausmann)
  - A special meeting has been called post interviews on the 12th to approve the committee's recommended selection.

- Casey Painter from BCDM and Zach Fergus from Lamp Rynearson presented the Board with the preliminary site layout of the DC West Sports Complex. Board Member Liz Mayer questioned safe walkways to the sports complex as well as access to storm shelters. Zach Fergus described walkways for safe access from the existing Western Douglas County Trail (NRD Trail) that will connect to the school property. Mayer requested to see a safety plan as this project moves forward.

7. New Business

7.1. Approve Elementary Assistant Principal New Hire
The administration recommended the approval of Alan Sarka as Elementary Assistant Principal. There were 29 applicants for the position. Interviews with five candidates were held with a team of 15 stakeholders on February 16th.

Motion to approve Alan Sarka as Elementary Assistant Principal beginning the 2024-2025 school year Passed with a motion by Bill Koile and a second by Luke Janke.

Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

7.2. Bromm & Associates Legislative Update
Jason Bromm, lobbyist from Bromm & Associates was in attendance and provided the Board with an update on the legislative session.

7.3. Approve District Calendars for 2024-2025 & 2025-2026
District calendars for the 2024-25 & 2025-26 school years were presented for Board approval.
Motion to approve the 2024-25 & 2025-26 District Calendars as presented Passed with a motion by Luke Janke and a second by Kelly Hinrichs.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

7.4. Approve Certificated Staff Resignations
Lyndsy Listenberger, 2nd grade and Niccole Kennec, 4th grade, have resigned their positions at the end of the 2023-2024 school year.
Motion to approve the resignations of Lyndsy Listenberger, 2nd grade and Niccole Kennec, 4th grade at the end of the 2023-2024 school year Passed with a motion by Jamie Jorgensen and a second by Elizabeth Mayer.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

7.5. Approve Certificated Staff Hiring
The administration recommended the following for hire beginning the 2024-2025 school year.
Molly Dembinski, 6th Grade English Language Arts
Michelle Anderson, Middle School Special Education
Mikayla Olson, 4th Grade
Emma Shepard, 2nd Grade

Motion to approve the hiring of Molly Dembinski, 6th Grade English Language Arts and Michelle Anderson, Middle School Special Education, Mikayla Olson, 4th Grade & Emma Shepard, 2nd Grade for the 2024-2025 school year Passed with a motion by Jamie Jorgensen and a second by Bill Koile.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

7.6. Approve Annual Technology Purchase on Three Year Cycle
Sandi Kerkhoff presented year two purchase of our annual technology purchase within our three-year cycle. The Board was presented a document of the cycle along with the bid for 510 devices and 380 cases in the amount of $295,116. It was recommended the Board approve this already budgeted expense, so our technology staff can work on transitioning devices this spring.
Motion to approve 510 devices and 380 cases in the amount of $295,116 as our annual budgeted technology hardware purchase Passed with a motion by Bill Koile and a second by Kelly Hinrichs.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

7.7. Option Enrollment Capacity Resolution
We adopted Appendix 1 to our option enrollment policy 5006 at the October meeting. Enrollment in many grade levels has changed since that time, either increasing or decreasing our projected enrollment and capacity for the number of option students. The resolution was brought again for Board approval as we will accept/reject option enrollment applications between March 15th- April 1st. Any student that is rejected will be placed on a wait list and as enrollment fluctuates, we will continue to monitor openings available and accept students per policy.
Board Member Mayer asked that the board consider an increase in projected enrollment numbers in addition to the actual enrollment numbers presented when finalizing option student spots available

Motion Passed with a motion by Luke Janke and a second by Kelly Hinrichs.
Elizabeth Mayer: Nay, Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Jim Tomanek: Yea
Yea: 5, Nay: 1

7.8. Option Enrollment Policy 5006 Revised Discussion & First Reading
The policy committee convened to look at our Option Enrollment Policy 5006 with the goal of aligning as closely as possible with our standards and practices. Several peer school district option enrollment standards & policies were reviewed along with the involvement of our legal counsel in creating the draft of the revised Option Enrollment Policy 5006 presented for discussion and first reading. Mayer expressed her concerns with the option enrollment waitlist added to policy and also the late application allowance.

7.9. Authorize Superintendent to Sell, Recycle, or Discard Equipment
The district has some items to sell, recycle, or discard in the coming months. Superintendent Poloncic asked for for the Board's authority to act on these items.

- Broken shop equipment
- Volleyball jerseys for sale
- Technology recycling that coincides with tech purchase

Motion to authorize the Superintendent to sell, recycle, or discard equipment as presented Passed with a motion by Kelly Hinrichs and a second by Jamie Jorgensen.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

8. Adjournment
Motion to adjourn meeting @8:15pm Passed with a motion by Jim Tomanek and a second by Luke Janke.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Elizabeth Mayer: Yea, Jim Tomanek: Yea
Yea: 6, Nay: 0

Kristi Trost, Board Secretary

Dr. Melissa Poloncic, Superintendent

MINUTES OF THE REGULAR MEETING OF THE BOARD OF EDUCATION OF DOUGLAS COUNTY SCHOOL DISTRICT 28-0015, a/k/a, DOUGLAS COUNTY WEST COMMUNITY SCHOOL DISTRICT
Tuesday, March 12, 2024

The regular meeting of the Board of Education, District #15, in the County of Douglas, in the State of Nebraska, was convened in open and public session on Tuesday, March 12, 2024 at the Central Office Board Room, 401 South Pine Street, Valley, NE 68064-0378.

Following public notification procedures approved by the Board of Education, February 14, 2011, in adherence to 84-1411, notice of the meeting was given in advance thereof by posting such Notice on the exterior front door of the high school, elementary school, middle school, Valley City Hall, First Nebraska Bank, and Foundation One Bank. Notice of the meeting was simultaneously given to all members of the Board of Education. Availability of the agenda was communicated in advance notice and in the notice to the Board of Education of the meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

Attendance Taken at 6:00 PM.

Kelly Hinrichs:	Present
Luke Janke:	Present
Jamie Jorgensen:	Present
Bill Koile:	Present
Elizabeth Mayer:	Absent
Jim Tomanek:	Present

Present: 5, Absent: 1.

1. Call to Order

The agenda, listing items for consideration by the Board, is on file in the Superintendent's office. Other matters may come before the Board and the Board has the right to modify the agenda before the meeting.

President – "As I call the meeting to order I wish to inform everyone present that a current copy of the Open Meetings Act is posted on the back wall of the Board Room for your review at any time."

2. New Business

2.1. Discuss, Consider and Take All Necessary Action on Findings & Recommendations of the Selection Committee for the Construction Manager at Risk for Sports Complex
Discuss, consider, and take all necessary action with regard to the Findings and Recommendations of the Selection Committee for the position of Construction Manager at Risk for a new multi-sport activities/athletics complex project.

The resolution was read and was shared with the Board at the meeting by a member of the selection committee.

The findings, recommendations, and rankings of the selection committee process were also shared.
Motion to approve and adopt the Resolution, as presented and attached hereto, with regard to the ranking and selection of MCL as the top ranked construction manager at risk for a new multi-sport activities/athletics complex project Passed with a motion by Jim Tomanek and a second by Kelly Hinrichs.

Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Jim Tomanek: Yea
Yea: 5, Nay: 0

2.2. Second Reading and Approval Revised Option Enrollment Policy 5006
This is to approve the revised Option Enrollment Policy 5006 prior to the approval window of option enrollment March 15-April 1.

Second reading of Board policy 5006; discuss, consider, and take action to adopt said policy.

Motion to approve Option Enrollment Policy 5006 as presented and to repeal and rescind all existing Board policies that pertain to the same matters or that are otherwise conflicting, including without limitation existing policies Passed with a motion by Luke Janke and a second by Jim Tomanek.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Jim Tomanek: Yea
Yea: 5, Nay: 0

3. Adjournment
Motion to adjourn meeting at 6:07pm Passed with a motion by Kelly Hinrichs and a second by Jim Tomanek.
Kelly Hinrichs: Yea, Luke Janke: Yea, Jamie Jorgensen: Yea, Bill Koile: Yea, Jim Tomanek: Yea
Yea: 5, Nay: 0

Kristi Trost, Board Secretary

Dr. Melissa Poloncic, Superintendent

DC WEST COMMUNITY SCHOOLS
www.dcwest.org

Jim Knott <jimknott@dcwest.org>

Early Graduation

1 message

Lyla Elsaesser <lyla.elsaesser@dcwfalcons.org> Mon, Apr 8, 2024 at 4:51 PM
To: Jim Knott <jimknott@dcwest.org>

Dear Mr. Knott,

I'm writing to ask if I could graduate early. I have enjoyed my school experience and feel as though I am ready to move on in my educational journey. I have taken the classes I need to graduate and also several that go towards my college degree. Graduating early would give me a more flexible schedule so that I can pursue classes at UNO and Metro that are not offered at DC West.

Thank you for your consideration,
Lyla Elsaesser

Lyla Elsaesser
Lindsay Elsaesser

CITY OF Valley
Growing Stronger Together

Mission

The City of Valley is committed to maintaining a great quality of family living with exceptional public services and opportunities to continue to grow in a proactive manner while preserving our small town identity.

Vision

The City of Valley shall maintain it's small town identity and shall realize growth and economic opportunity.

CITY OF Valley
Growing Stronger Together

3,385
total population

Population Data

48.5	median age
50%	male population
50%	female population
$80,319	median household income
$117,580	mean household income
5%	poverty rate

City Data

1,437	residential water customers
93	commercial water customers
2,008	police calls (2023)
19.5	employees (FTEs)

Detailed population statistics from the 2022 American Community Survey.

CITY OF Valley
Growing Stronger Together

$389,100
median house price

Residential Development

- 165 lots currently available
- 3 other residential developments in early stages

Timber Shores (SID)
38 total lots

32 developed or have permits

Bluewater (TIF)
255 total lots

211 developed or have permits

Flatwater
130 total lots

67 developed or have permits

Country Aire (SID)
47 total lots

18 developed or have permits

Stillwater
23 townhomes

2 commercial lots

Others - in early stages
Valley Landing

Elkhorn Sport Complex

Flatwater Estates

Commercial Development

- MD West One Sports Complex
- Falcon Business Park
- Valley Suburban Fire Station
- 3M expansion
- Valley Landing
- Valley Lakes Business Park

AGENDA

Discuss, consider and take all necessary action with regard to approving the construction manager at risk agreement with Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction, for the proposed new multi-sport activities/athletics complex project.

MOTION

MOTION 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 Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction, for the proposed new multi-sport activities/athletics complex project to be located on property owned by the School District near North 264th Street, such agreement 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 Board President or Superintendent of Schools, and further hereby delegates authority to and authorizes and directs the Board President, or designee, to sign, execute and deliver the agreement, any agreement amendments, change orders or other documents call for in such agreement, to pay the contract sum, and to take all other action necessary to carry such agreement into effect.

Board member _____ seconded the MOTION. After discussion and on roll call vote, the following Board members voted in favor of passage and adoption of the above Motion: _____
_____.

The following Board members voted against the same: _____.

The following Board members were absent or not voting: _____.

The above Motion having been consented to by a majority of the members of the Board of Education of this School District, was declared as passed and adopted by the Board President at a duly held and lawfully convened meeting in full compliance with the Nebraska Open Meetings Law.

DATED this 15th day of April, 2024.

DOUGLAS COUNTY SCHOOL DISTRICT
28-0015, a/k/a DC West Community Schools

BY: _____
President

ATTEST:

_____
Secretary

AIA® Document A133® – 2019

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

AGREEMENT made as of the 15th day of April in the year 2024 (Effective Date)
(In words, indicate day, month, and year.)

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

Douglas County School District 28-0015, a/k/a DC West Community Schools
A Nebraska political subdivision
401 S. Pine Street
Valley, NE 68064

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

Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction
A Nebraska corporation
14558 Portal Circle
La Vista, NE 68138

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

DC West Community Schools – A new multi-sport activities/athletics complex, generally consisting of a football/soccer stadium with competition running track, softball field, baseball field, concessions, restrooms, storage facility and parking and other site improvements, as more particularly described on the Project Statement, attached as Appendix A.

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

Beringer Ciaccio Dennell Mabrey, Inc., d/b/a BCDM Architects
A Nebraska corporation
1015 N. 98th Street, Suite 300
Omaha, NE 68114

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

Rainwood Development Partners LLC
10340 N 84th Street
Omaha, NE 68122
("Owner's Representative")

The Owner and Construction Manager agree as follows.

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

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

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

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User Notes: (962811185)

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6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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12 DISPUTE RESOLUTION

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14 MISCELLANEOUS PROVISIONS

15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Project Statement, attached as Appendix A

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

See Project Statement, attached as Appendix A

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

See Project Statement, attached as Appendix A

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

.1 Design phase milestone dates, if any:

See Project Statement, attached as Appendix A

.2 Construction commencement date:

See Project Statement, attached as Appendix A

.3 Substantial Completion date or dates:

See Project Statement, attached as Appendix A

.4 Other milestone dates:

See Project Statement, attached as Appendix A

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

None

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

None

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

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

See Project Statement, attached as Appendix A

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

Dr. Melissa Poloncic, Superintendent of Schools
DC West Community Schools
401 S. Pine Street
Valley, NE 68064
402-359-2583
MPoloncic@dcwest.org

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

Alex Henery, Senior Project Manager
Rainwood Development Partners LLC

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User Notes: (962811185)

10340 N 84th Street
Omaha, NE 68122
402-980-9862
ahenery@rdpne.com

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

.1 Geotechnical Engineer:

To be determined

.2 Civil Engineer:

Lamp Rynearson, Inc.
A Nebraska corporation
14710 W. Dodge Road, Suite 100
Omaha, NE 68154

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

None

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

Casey Painter
BCDM Architects
1015 N. 98th Street, Suite 300
Omaha, NE 68114
402-391-2211
cpainter@bcdm.net

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

Brent Suing, Project Executive
MCL Construction
14558 Portal Circle
La Vista, NE 68138
402-339-2221
bjs@mclconstruction.com

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

See personnel on Construction Manager's Efforts Schedule, Appendix B.

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

§ 1.1.14.1 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 7 or those portions of the Work agreeable to the Owner, shall be competitively bid and 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.

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The Construction Manager shall advertise for competitive bids for each Subcontract and award such Subcontracts as set forth below.

§ 1.1.14.2 The Construction Manager, in consultation with the Owner and Architect and with the approval of the Owner, shall develop bid packages for the Work on the Project.

§ 1.1.14.3 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.

§ 1.1.14.4 The Construction Manager shall be present at all bid openings. Unless otherwise agreed, all bids will be opened at the Owner's designated administrative offices. All submitted bids shall be available for public inspection 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.

§ 1.1.14.5 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. 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.

§ 1.1.14.6 Should the Construction Manager or a related party in any way affiliated with the Construction Manager 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.

§ 1.1.14.7 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.

§ 1.1.14.8 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.

§ 1.1.14.9 Notwithstanding the foregoing, the Owner, in consultation with the Architect, may elect to waive the competitive bidding requirement on any package or portion of the Work when deemed in the best interest of the Owner or the Project.

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

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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.

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201, General Conditions of the Contract for Construction, as amended and incorporated herein, shall apply as specified in this Agreement.

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

§ 2.4 Term of Agreement: The term of this Agreement between the Owner and the Construction Manager shall be for a period commencing on the Effective Date 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 Project 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 Certificate of Substantial Completion for the Project.

.2 The termination of this Agreement according to its terms.

§ 2.5 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.

§ 2.6 Definitions

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§ 2.6.1 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 Project 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 7 to this Agreement. "Cost of the Work" shall not include the Construction Manager's Compensation under Articles 5 and 6 of this Agreement, unused Construction Contingency, any 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.

§ 2.6.2 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, or for costs incurred by the Construction Manager to manage additional Work. 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 Guaranteed Maximum Price. 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.

§ 2.6.3 Guaranteed Maximum Price

"Guaranteed Maximum Price" or "GMP" shall mean the total of the sum of the Cost of the Work for the Project under Article 7 plus the Construction Manager's Compensation under Articles 5 and 6 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 A, 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. 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 COST OF THE WORK AND THE GUARANTEED MAXIMUM PRICE AS ADJUSTED BY CHANGE ORDERS, IF ANY.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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Manager shall inquire on any perceived variances it is or becomes aware of. The Construction Manager shall ensure that all Self-Performed Work and that 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.

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

§ 3.1.3 Consultation

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule, not less than monthly, for the Owner's and the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

None

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When the Construction Documents for a Project are approximately seventy percent (70%) completed, but not later than the date(s) specified in the Project Statement, Appendix A, for that Project, unless such date is extended by agreement of the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance or comments for modifications. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract upon which the Guaranteed Maximum Price 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 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems based on construction industry divisions of work or current CSI designations, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date, not less than thirty (30) days after receipt by the Owner of the Construction Manager's Guaranteed Maximum Price proposal, by which the Owner must either accept the Guaranteed Maximum Price or return the Construction Manager's proposal for modification or further refinement.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The amount of the Construction Contingency to be included in the Guaranteed Maximum Price proposal shall be a percentage of the aggregate value of the estimated Cost of the Work, which is to be converted to a dollar amount.

§ 3.2.4.1 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.

§ 3.2.4.2 The Construction Manager may, at its discretion, make portions of the Construction Contingency available for the Owner's use. 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.

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

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment, 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.

§ 3.2.6.1 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.

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.1.3 On-Site and Project Staffing

The Construction Manager shall maintain exclusively for the Project 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 identified on the Efforts Schedule, Appendix B, and shall not be removed or replaced without the Owner's prior 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:

§ 3.3.1.3.1 Project Manager

The 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.

§ 3.3.1.3.2 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 the Work 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) shall be 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 Subcontractors are in compliance with the Contract Documents and all local, state and federal regulations; (3) shall make continuous on-site inspections to check quality or quantity of the Work; and, (5) shall keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

§ 3.3.1.3.3 Other Project Staffing

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The Construction Manager may have and utilize other project-specific staffing for the Project, which may include a project executive, preconstruction manager, cost estimator(s), project engineer(s), safety director, and BIM coordinator. It is understood that these project personnel may not be dedicated full-time to the project and may not be present full-time at the site. If other project personnel are identified on Efforts Schedule, Appendix B, compensation shall be made pursuant to §§ 5.1.1 and 6.1.2.1.

§ 3.3.1.4 Support Staffing

The Construction Manager may have and utilize support staffing for the Project other than the staffing identified in §§ 3.3.1.3.1, 3.3.1.3.2 or 3.3.1.3.3 above. It is understood that these project personnel may not be dedicated full-time to the project and will not be present at the site. No personnel other than those categories of personnel described in §§ 3.3.1.3.1, 3.3.1.3.2 or 3.3.1.3.3 may be included on the Efforts Schedule, Appendix B. The Construction Manager's compensation, if any, for support staffing shall be included pursuant to § 6.1.2.2.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201. 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 Guaranteed Maximum Price 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 Completion and Final Completion. The Construction Manager may revise the schedule throughout the Project as it deems necessary, and as agreed to by the Owner, so long as it does not defer the specified date of Substantial Completion 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.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's

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obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant, 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 if any actual or perceived inconsistent, incorrect, or inaccurate information is discovered by the Construction Manager or any Subcontractors.

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

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

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

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

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. For purposes of this Agreement, any documents, records or notices that must be provided to the Owner shall also be provided to the Owner's Representative.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in an agreement between the Owner and the Architect.

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ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

The Construction Manager's fee shall be on an hourly basis at the applicable hourly rates set forth on the Efforts Schedule, Appendix B, and shall not exceed hours shown on the Efforts Schedule.

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

See Appendix B, Efforts Schedule

Individual or Position	Rate

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

(Paragraph deleted)

§ 5.2 Payments

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

§ 5.2.2 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.

§ 5.2.3 Certified amounts unpaid within the time specified in Section 5.2.2 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 percent (12 %) per annum

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

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

§ 6.1.2.1 Construction Manager's Personnel Fee

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The Construction Manager's Personnel Fee covering wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, within categories described in § 3.3.1.3, and identified on the Efforts Schedule, Appendix B, shall be on an hourly basis for the actual hours worked by the Construction Manager's personnel. The hourly rates shall be as set forth on the Efforts Schedule, Appendix B. The billable hours shall not exceed the hours shown on the Efforts Schedule, Appendix B. The Construction Manager's total, maximum supervisory fee for all preconstruction and construction phase services on the Project, including all fees under Section 5.1.1 and this Section 6.1.2.1, shall not exceed the amount of SIX HUNDRED SIXTY-THREE THOUSAND, SEVEN HUNDRED EIGHTY-THREE DOLLARS ($663,783.00).

§ 6.1.2.2 Construction Manager's Overhead Fee

The Construction Manager's Overhead Fee covering overhead, profit and risk for the entire Project shall be the amount of TWO AND THREE QUARTERS PERCENT (2.75%) of the final total Cost of the Work for the entire Project; 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 Construction Manager shall not receive any compensation whatsoever for corporate overhead, profit and risk for preconstruction phase services.

§ 6.1.3 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; such adjustment shall be determined based upon the revised Schedules and Scope of the Work, and added to the Agreement by addendum.

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

None

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project. There shall be no mark-up on rental rates.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

Not Applicable

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

One-hundred present of costs savings retained by the Owner.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, Exhibit A, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. One hundred percent of any savings in the Cost of the Work and construction contingency shall inure to the benefit of the Owner.

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. The Cost of the Work does not include the Construction Manager's Fee under either Articles 5 or 6, or unused and unallocated Construction Contingency.

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

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

§ 7.2 Labor Costs

There shall be no separate labor charges for any of the Work on the Project, including any on-site administrative or supervisory personnel or back-office administrative personnel, except for labor by the Construction Manager for General Conditions / Aid-to-Construction under Section 7.5 below. The cost of the Construction Manager's on-site administrative or supervisory personnel shall be reimbursed only as provided in Articles 5 and 6 above.

(Paragraphs deleted)

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement, and any payments due the Construction Manager for the Construction Manager's Self-Performed Work. The Construction Manager's Self-Performed Work shall not include any work by the Construction Manager's management, supervisory, administrative or office personnel under this Agreement.

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

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

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

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

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

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

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

§ 7.5.4 Costs of the Construction Manager's site office, but not including general office equipment, desks, computers, telecommunication equipment and supplies. Costs for the excluded office equipment may be reimbursed, if at all, pursuant to § 6.1.2.2

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

§ 7.6 Miscellaneous Costs

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

(Paragraphs deleted)

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

§ 7.6.2.1 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 Construction Manager and Subcontractors fulfill 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 Subcontract for the Work is awarded. The Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. The Construction Manager shall obtain Resale Certificates from the Construction Managers and/or Subcontractor's suppliers. Failure of the Construction Manager or any Subcontractor to obtain Resale Certificates from suppliers shall make the Construction Manager or Subcontractor responsible for absorbing the tax, without compensation from the Owner. The 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 THE OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF THE CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH TAX LAWS AND REGULATIONS.

§ 7.6.3 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.

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

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

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

§ 7.6.6 Costs for project-specific communications services, electronic equipment, and software, each of which are directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, pursuant to the Efforts Schedule, Appendix B.

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

- **.1** Salaries and other compensation of the Construction Manager's personnel, regardless of location whether stationed at the Work site, the Construction Manager's principal office or offices other than the site office;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 6.1.2.2 and 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for services incurred during the Preconstruction Phase;
- **.10** Cost of General Conditions, other than costs approved through Change Orders by the Owner, in excess of the fixed General Conditions Lump Sum shown on the Guaranteed Maximum Price and
- **.11** Costs for the Construction Manager's site superintendent vehicle; and
- **.12** Costs for insurance premiums.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid or proposal that conforms to the requirements of

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the Contract Documents without reservations or exceptions, but the Owner requires that another bid or proposal be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid or proposal of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 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 amount certified 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 of the amount certified 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.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

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

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

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

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

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

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

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

The amount equal to ten percent (10%) of the completed Work for the first fifty percent (50%) of the Contract Sum, and the amount equal to five percent (5%) of the completed Work for the last fifty percent (50%) of the Contract Sum.

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§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

None

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

None

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

(Paragraph deleted)
The amount equal to one hundred twenty-five percent (125%) of the estimated cost to complete the Work remaining. If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

The amount equal to the three percent (3%) of the Contract Sum until the Contractor has submitted to 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 Agreement have been made by the Contractor and any Subcontractors to the Unemployment Compensation Fund.

§ 11.1.9 [omit]

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

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

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

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

- **.1** the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201, 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 in accordance with Section 11.2.2.2;
- **.4** the Architect has certified the total Cost of the Work for the Project;

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.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, if applicable, 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 warranties, and maintenance and instruction manuals; and

.10 the Construction Manager has submitted record drawings and "as-built" drawings.

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

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

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

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

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

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

§ 11.3 Interest

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

Twelve percent (12%) per annum

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ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

§ 12.2 Binding Dispute Resolution

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

[ ] Arbitration pursuant to Article 15 of AIA Document A201

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201.

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

(Paragraphs deleted)

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§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

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

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

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

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

§ 14.3.1.5 [omit]

§ 14.3.1.6 Other Insurance

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

Coverage	Limits

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

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

§ 14.3.2 Construction Phase

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

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

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

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

§ 14.5.1 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 Douglas County, Nebraska.

§ 14.5.2 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.

§ 14.5.3 Use of Job Site and Security

§ 11.5.3.1 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.

§ 14.5.3.2 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.

§ 14.5.3.3 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

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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.

§ 14.5.4 Equal Opportunity in Employment

§ 14.5.4.1 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.

§ 14.5.4.2 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.

§ 14.5.5 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.

§ 14.5.6 Criminal History Checks

§ 14.5.6.1 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.

§ 14.5.6.2 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.

§ 14.5.6.3 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

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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.

§ 14.5.6.4 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.

§ 14.5.7 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.

§ 14.5.8 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.

.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.

§ 14.5.9 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 to submit to the Owner, upon execution of the Agreement, the affidavit marked as Appendix D, 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

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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.

§ 14.5.10 Claims for Consequential Damages

§ 14.5.10.1 Except as provided and subject to the provisions herein, the Construction Manager and the Owner waive claims against each other for consequential damages arising out of or relating to the subject matter of this Agreement.

§ 14.5.10.2 The mutual waiver in § 14.5.10.1 applies only to the extent: (1) the party against whom the claim for consequential damages is made has obtained and maintained the insurance coverages and limits required by the Agreement and the Contract Documents; (2) such insurance specifically allows claims for consequential damages up to the specific policy limits; (3) the insurance covers the event and consequential damages at issue, and (4) for such amounts in excess of the actual recovery of insurance proceeds by the claiming party.

§ 14.5.10.3 The mutual waiver in § 14.5.10.1 shall not apply to the following: (1) specific items of damage allowed for in this Agreement and in the Contract Documents; and (2) assessment of liquidated damages by the Owner against the Construction Manager, but only if provided and allowed for in the Agreement.

§ 14.5.10.4 Notwithstanding anything in the Agreement to the contrary, the Construction Manager waives all claims against the Owner for consequential damages incurred by the Construction Manager for any office expenses, for personnel, for loss of financing, business and reputation, and for loss of profit, except anticipated profit directly from the Work.

§ 14.5.11 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.

§ 14.5.12 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.

§ 14.5.13 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.

§ 14.5.14 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.

§ 14.5.15 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.

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§ 14.5.16 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.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201, General Conditions of the Contract for Construction

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

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

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

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

Project Statement, Appendix A
Efforts Schedule, Appendix B
Job Site Security Requirements, Appendix C
Form contractor affidavit, Appendix D

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

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OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Bill Koile, President Board of Education *(Printed name and title)*	Brent Suing, Project Executive *(Printed name and title)*

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Appendix A

PROJECT STATEMENT
DC West Multi-Sport Activities/Athletics Project

1. **Scope of Project:** The proposed facilities improvement project generally consists of the following:

A. Football/Soccer Stadium with Competition Running Track. Competition football and soccer stadium with synthetic turf. Competition running track, 8 lane synthetic surface. The stadium also will include home and visitor bleachers and a press box.

B. Softball Field. Competition softball field, with the following general characteristics: full synthetic turf (infield and outfield), 200 ft outfield fence, lighting, home and visitor dugouts, home and visitor bullpens, shared batting cages with baseball.

C. Baseball Field. Competition baseball field, with the following general characteristics: full synthetic turf (infield and outfield), 400 ft to centerfield fence, 325 feet down foul lines to left and right field fence, lighting, home and visitor dugouts, home and visitor bullpens, shared batting cages with softball.

D. Concessions, Restroom and Storage. One or more facilities to handle concessions, restrooms and storage. Number and size to be determined.

E. Site Improvements. Parking lot with lighting for 500 stalls. Grading to include elevating site out of floodplain.

2. **Project Locations:** The project is to be located on real estate owned by the school district, consisting of approximately 45 acres, generally located west of N. 264th Street in Valley, Nebraska, and as shown in the diagram below.



3. **Construction Budget:** The preliminary total construction budget for all costs for the Project is not to exceed Thirteen Million Dollars ($13,000,000). This project construction budget includes all costs and expenses for the Project, including but not limited to all labor and materials for construction (subcontracted and self-performed), construction manager fees and reimbursable expenses, general conditions/aid-to-construction costs, permits, special testing and any construction contingency. The construction budget does not include any architect/engineering fees and reimbursable expenses, or any Owner's Representative fees and expenses.

4. **Project Schedule:** The preliminary schedule for the Projects are as follows:

Event	Date
CM@R contract execution	April 2024
CM@R pre-construction services begin	April 9, 2024
Design start	December 2023
70% Construction Documents:	June 6, 2024
Guaranteed Maximum Price (Amendment):	August 2024
Construction Start:	June 16, 2024
Substantial Completion: Softball field and Football/Soccer stadium, along with bleachers, lights, parking lots press boxes, restrooms and concessions	July 31, 2025
Substantial Completion : Baseball field, maintenance building	September 1, 2025

Final Completion: All phases	October 31, 2025

Appendix B

MAXIMUM PERSONNEL EXPENSE EFFORTS SCHEDULE
DC WEST MULTI-SPORT ACTIVITIES/ATHLETICS PROJECT

		PROJECT EXEC.	PROJECT MNGR.	SITE SUP'T	OTHER PROJECT PERSONNEL			
		Brent Suiing	James Kramer	Jim Romano	Project Engineer (TBD)	Matt Blum (Precon)	Estimator (TBD)	Monthly Hours Subtotals
Hrly Rate		OPR	$113.31	$135.79	$78.55	$91.78	$67.36	
Month		Pre-Construction Effort Commencement Date: April 2024						
2024	Apr	44	44	18	0	36	44	186
	May	46	46	18	0	37	46	193
	Jun	40	40	16	0	32	40	168
	July	46	46	18	18	37	46	211
		Construction Commencement Date: August 2024						
2024	Aug	22	88	176	88	0	0	374
	Sep	23	92	184	92	0	0	391
	Oct	20	80	160	80	0	0	340
	Nov	23	92	184	92	0	0	391
	Dec	22	88	176	88	0	0	374
2025	Jan	23	92	184	92	0	0	391
	Feb	20	80	160	80	0	0	340
	Mar	21	84	168	84	0	0	357
	Apr	22	88	176	88	0	0	374
	May	22	88	176	88	0	0	374
	Jun	21	84	168	84	0	0	357
	July	23	92	184	92	0	0	391
		Substantial Completion - July 2025						
2025	Aug	21	84	168	84	0	0	357
	Sep	22	88	176	88	0	0	374
	Oct	23	92	184	92	0	0	391
Subtotal Hours		504	1488	2694	1330	142	176	6334
Subtotal MPE		0	$168,605	$365,818	$104,472	$13,033	$11,855	
							Total MPE	**$663,783**

Appendix C

JOB SITE SECURITY REQUIREMENTS

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 the personnel of such entities shall not assign to work on the School District's building project an employee having a criminal record as defined by the School District's policy, regulations, practices or directives and the general conditions of contract for the Project.

2. The School District has established a construction site security procedure which requires all employees of the Contractors and Subcontractors and other project related personnel to wear a badge or sticker containing a unique identifier number. This unique identifier number must be logged by the Contractor's Site Superintendent, or designee, 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 School District Superintendent's office at the end of each week. If wearing 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 Site Superintendent or Project Manager 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 School District 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 Contractor for the Project and kept in the on-site offices.

CRIMINAL RECORDS DIRECTIVE

(a) Definitions

1. "Disqualifying criminal history" shall mean 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.

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 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 Contractor, Subcontractor or Supplier or School District determine that an employee as 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.

Appendix C

CRIMINAL RECORD DISCLOSURE

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 _____-_____-_____

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 C

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 School District, or other locations under the Contract entered into between our firm and the School District, who has a criminal record of a serious nature as defined by School District policy, regulations, practices or directives, and as expressed in the "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 the School District. 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 _____, 20__.

_____
Name of Contract Vendor

By: _____
An Authorized Official

Appendix C

CERTIFIED WORKER LIST

Firm Name: _____ Date: _____
Contractor/Subcontractor/Supplier

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

Appendix D

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

AFFIDAVIT

The undersigned ("Contractor") has entered into a contract for the Contractor to perform construction or delivery services pursuant to a contract with regard to the DC West Multi-Sport Activities Complex project ("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 the contract by the Construction Manager or the Owner. Contractor further acknowledges that providing a false affidavit under Neb. Rev. Stat. § 48-2911 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 the Owner 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.

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

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

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

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PAGE 1

AGREEMENT made as of the 15th day of April in the year 2024 (Effective Date)

...

Douglas County School District 28-0015, a/k/a DC West Community Schools
A Nebraska political subdivision
401 S. Pine Street
Valley, NE 68064

...

Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction
A Nebraska corporation
14558 Portal Circle
La Vista, NE 68138

...

DC West Community Schools – A new multi-sport activities/athletics complex, generally consisting of a football/soccer stadium with competition running track, softball field, baseball field, concessions, restrooms, storage facility and parking and other site improvements, as more particularly described on the Project Statement, attached as Appendix A.

...

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

Beringer Ciaccio Dennell Mabrey, Inc., d/b/a BCDM Architects
A Nebraska corporation
1015 N. 98th Street, Suite 300
Omaha, NE 68114

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

Rainwood Development Partners LLC
10340 N 84th Street
Omaha, NE 68122
("Owner's Representative")

PAGE 2

See Project Statement, attached as Appendix A

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...

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

PAGE 3

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

None

...

None

...

See Project Statement, attached as Appendix A

...

Dr. Melissa Poloncic, Superintendent of Schools
DC West Community Schools
401 S. Pine Street
Valley, NE 68064
402-359-2583
MPoloncic@dcwest.org

...

Alex Henery, Senior Project Manager
Rainwood Development Partners LLC
10340 N 84th Street
Omaha, NE 68122
402-980-9862
ahenery@rdpne.com

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

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To be determined

...

Lamp Rynearson, Inc.
A Nebraska corporation
14710 W. Dodge Road, Suite 100
Omaha, NE 68154

...

None

...

Casey Painter
BCDM Architects
1015 N. 98th Street, Suite 300
Omaha, NE 68114
402-391-2211
cpainter@bcdm.net

...

Brent Suing, Project Executive
MCL Construction
14558 Portal Circle
La Vista, NE 68138
402-339-2221
bjs@mclconstruction.com

...

See personnel on Construction Manager's Efforts Schedule, Appendix B.

...

§ 1.1.14.1 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 7 or those portions of the Work agreeable to the Owner, shall be competitively bid and 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. The Construction Manager shall advertise for competitive bids for each Subcontract and award such Subcontracts as set forth below.

§ 1.1.14.2 The Construction Manager, in consultation with the Owner and Architect and with the approval of the Owner, shall develop bid packages for the Work on the Project.

§ 1.1.14.3 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

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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.

§ 1.1.14.4 The Construction Manager shall be present at all bid openings. Unless otherwise agreed, all bids will be opened at the Owner's designated administrative offices. All submitted bids shall be available for public inspection 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.

§ 1.1.14.5 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. 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.

§ 1.1.14.6 Should the Construction Manager or a related party in any way affiliated with the Construction Manager 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.

§ 1.1.14.7 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.

§ 1.1.14.8 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.

§ 1.1.14.9 Notwithstanding the foregoing, the Owner, in consultation with the Architect, may elect to waive the competitive bidding requirement on any package or portion of the Work when deemed in the best interest of the Owner or the Project.

PAGE 6

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.

...

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

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

§ 2.4 Term of Agreement: The term of this Agreement between the Owner and the Construction Manager shall be for a period commencing on the Effective Date 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 Project 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 Certificate of Substantial Completion for the Project.

.2 The termination of this Agreement according to its terms.

§ 2.5 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.

§ 2.6 Definitions

§ 2.6.1 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 Project 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 7 to this Agreement. "Cost of the Work" shall not include the Construction Manager's Compensation under Articles 5 and 6 of this Agreement, unused Construction Contingency, any 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.

§ 2.6.2 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, or for costs incurred by the Construction Manager to manage additional Work. 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 Guaranteed Maximum Price. 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.

§ 2.6.3 Guaranteed Maximum Price

"Guaranteed Maximum Price" or "GMP" shall mean the total of the sum of the Cost of the Work for the Project under Article 7 plus the Construction Manager's Compensation under Articles 5 and 6 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 A, 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. 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

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WITH NO CONTRIBUTION FROM THE OWNER OF THE DIFFERENCE BETWEEN THE FINAL COST OF THE WORK AND THE GUARANTEED MAXIMUM PRICE AS ADJUSTED BY CHANGE ORDERS, IF ANY.

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

...

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall inquire on any perceived variances it is or becomes aware of. The Construction Manager shall ensure that all Self-Performed Work and that 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.

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

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project ~~schedule for~~ schedule, not less than monthly, for the Owner's and the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

...

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and

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refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Owner's and the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

PAGE 9

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

...

None

...

§ 3.2.1 ~~At a time to be mutually agreed upon by~~ When the Construction Documents for a Project are approximately seventy percent (70%) completed, but not later than the date(s) specified in the Project Statement, Appendix A, for that Project, unless such date is extended by agreement of the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's ~~acceptance.~~ acceptance or comments for modifications. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

PAGE 10

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the ~~Contract;~~Contract upon which the Guaranteed Maximum Price is based;

...

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or ~~systems,~~ systems based on construction industry divisions of work or current CSI designations, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

...

.5 A ~~date by which the Owner must accept the Guaranteed Maximum Price.~~date, not less than thirty (30) days after receipt by the Owner of the Construction Manager's Guaranteed Maximum Price proposal, by which the Owner must either accept the Guaranteed Maximum Price or return the Construction Manager's proposal for modification or further refinement.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The amount of the Construction Contingency to be included in the Guaranteed Maximum Price proposal shall be a percentage of the aggregate value of the estimated Cost of the Work, which is to be converted to a dollar amount.

§ 3.2.4.1 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.

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§ 3.2.4.2 The Construction Manager may, at its discretion, make portions of the Construction Contingency available for the Owner's use. 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.

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

...

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price ~~Amendment~~ 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.

§ 3.2.6.1 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.

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

...

§ 3.3.1.3 On-Site and Project Staffing

The Construction Manager shall maintain exclusively for the Project 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 identified on the Efforts Schedule, Appendix B, and shall not be removed or replaced without the Owner's prior 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:

§ 3.3.1.3.1 Project Manager

The 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.

§ 3.3.1.3.2 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 the Work 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) shall be responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety

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precautions and programs in connection with the Work performed by the Subcontractors are in compliance with the Contract Documents and all local, state and federal regulations; (3) shall make continuous on-site inspections to check quality or quantity of the Work; and, (5) shall keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

§ 3.3.1.3.3 Other Project Staffing

The Construction Manager may have and utilize other project-specific staffing for the Project, which may include a project executive, preconstruction manager, cost estimator(s), project engineer(s), safety director, and BIM coordinator. It is understood that these project personnel may not be dedicated full-time to the project and may not be present full-time at the site. If other project personnel are identified on Efforts Schedule, Appendix B, compensation shall be made pursuant to §§ 5.1.1 and 6.1.2.1.

§ 3.3.1.4 Support Staffing

The Construction Manager may have and utilize support staffing for the Project other than the staffing identified in §§ 3.3.1.3.1, 3.3.1.3.2 or 3.3.1.3.3 above. It is understood that these project personnel may not be dedicated full-time to the project and will not be present at the site. No personnel other than those categories of personnel described in §§ 3.3.1.3.1, 3.3.1.3.2 or 3.3.1.3.3 may be included on the Efforts Schedule, Appendix B. The Construction Manager's compensation, if any, for support staffing shall be included pursuant to § 6.1.2.2.

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§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of ~~A201–2017.~~A201. 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 Guaranteed Maximum Price 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 Completion and Final Completion. The Construction Manager may revise the schedule throughout the Project as it deems necessary, and as agreed to by the Owner, so long as it does not defer the specified date of Substantial Completion 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.

...

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

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

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and ~~relevant~~ 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 if any actual or

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perceived inconsistent, incorrect, or inaccurate information is discovered by the Construction Manager or any Subcontractors.

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The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of ~~A201–2017,~~ A201, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. For purposes of this Agreement, any documents, records or notices that must be provided to the Owner shall also be provided to the Owner's Representative.

...

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

PAGE 14

The Construction Manager's fee shall be on an hourly basis at the applicable hourly rates set forth on the Efforts Schedule, Appendix B, and shall not exceed hours shown on the Efforts Schedule.

...

See Appendix B, Efforts Schedule

...

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

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

...

§ 5.2.2 ~~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.~~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.

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§ 5.2.3 Certified amounts unpaid within the time specified in Section 5.2.2 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.

...

~~% —~~Twelve percent (12 %) per annum

...

§ 6.1.2.1 Construction Manager's Personnel Fee

The Construction Manager's Personnel Fee covering wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, within categories described in § 3.3.1.3, and identified on the Efforts Schedule, Appendix B, shall be on an hourly basis for the actual hours worked by the Construction Manager's personnel. The hourly rates shall be as set forth on the Efforts Schedule, Appendix B. The billable hours shall not exceed the hours shown on the Efforts Schedule, Appendix B. The Construction Manager's total, maximum supervisory fee for all preconstruction and construction phase services on the Project, including all fees under Section 5.1.1 and this Section 6.1.2.1, shall not exceed the amount of SIX HUNDRED SIXTY-THREE THOUSAND, SEVEN HUNDRED EIGHTY-THREE DOLLARS ($663,783.00).

§ 6.1.2.2 Construction Manager's Overhead Fee

The Construction Manager's Overhead Fee covering overhead, profit and risk for the entire Project shall be the amount of TWO AND THREE QUARTERS PERCENT (2.75%) of the final total Cost of the Work for the entire Project; 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 Construction Manager shall not receive any compensation whatsoever for corporate overhead, profit and risk for preconstruction phase services.

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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; such adjustment shall be determined based upon the revised Schedules and Scope of the Work, and added to the Agreement by addendum.

...

None

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (—%) of~~ the standard rental rate paid at the place of the Project. There shall be no mark-up on rental rates.

...

Not Applicable

...

One-hundred present of costs savings retained by the Owner.

...

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, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. One hundred percent of any savings in the Cost of the Work and construction contingency shall inure to the benefit of the Owner.

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...

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

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

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

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document ~~A201–2017~~ A201 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.
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§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. The Cost of the Work does not include the Construction Manager's Fee under either Articles 5 or 6, or unused and unallocated Construction Contingency.

...

There shall be no separate labor charges for any of the Work on the Project, including any on-site administrative or supervisory personnel or back-office administrative personnel, except for labor by the Construction Manager for General Conditions / Aid-to-Construction under Section 7.5 below. The cost of the Construction Manager's on-site administrative or supervisory personnel shall be reimbursed only as provided in Articles 5 and 6 above.

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

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

~~**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~
~~*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*~~

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

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

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

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

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement, and any payments due the Construction Manager for the Construction Manager's Self-Performed Work. The Construction Manager's Self-Performed Work shall not include any work by the Construction Manager's management, supervisory, administrative or office personnel under this Agreement.
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§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items (General Conditions / Aid-to-Construction)

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

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

...

§ 7.5.4 Costs of the Construction Manager's site office, but not including general office equipment, desks, computers, telecommunication equipment and supplies. Costs for the excluded office equipment may be reimbursed, if at all, pursuant to § 6.1.2.2

...

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

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

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

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

§ 7.6.2.1 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 Construction Manager and Subcontractors fulfill the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood

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and agreed that the Construction Manager may be required to segregate materials and labor costs at the time a Subcontract for the Work is awarded. The Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. The Construction Manager shall obtain Resale Certificates from the Construction Managers and/or Subcontractor's suppliers. Failure of the Construction Manager or any Subcontractor to obtain Resale Certificates from suppliers shall make the Construction Manager or Subcontractor responsible for absorbing the tax, without compensation from the Owner. The 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 THE OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF THE CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH TAX LAWS AND REGULATIONS.

§ 7.6.3 ~~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.

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

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

§ 7.6.6 Costs for project-specific communications services, electronic equipment, and software, each of which are directly related to the Work and located at the site, with the Owner's prior approval.

...

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the ~~Work.~~Work, pursuant to the Efforts Schedule, Appendix B.

...

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

...

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

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.1 Salaries and other compensation of the Construction Manager's ~~personnel stationed at the~~ personnel, regardless of location whether stationed at the Work site, the Construction Manager's principal office or offices other than the site ~~office, except as specifically provided in Section 7.2, or as may be provided in Article 14;~~office;

...

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.4 Overhead and general expenses, except as may be expressly included in Sections 6.1.2.2 and 7.1 to 7.7;

...

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;~~and~~

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

.10 Cost of General Conditions, other than costs approved through Change Orders by the Owner, in excess of the fixed General Conditions Lump Sum shown on the Guaranteed Maximum Price and

.11 Costs for the Construction Manager's site superintendent vehicle; and

.12 Costs for insurance premiums.

...

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

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid or proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid or proposal be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid or proposal of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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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 logs, site superintendent reports, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

...

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

month.

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

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

...

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

...

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document ~~A201–2017;~~A201;

...

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201–2017;~~A201;

...

The amount equal to ten percent (10%) of the completed Work for the first fifty percent (50%) of the Contract Sum, and the amount equal to five percent (5%) of the completed Work for the last fifty percent (50%) of the Contract Sum.

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None

...

None

...

~~**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~The amount equal to one hundred twenty-five percent (125%) of the estimated cost to complete the Work remaining. If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

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The amount equal to the three percent (3%) of the Contract Sum until the Contractor has submitted to 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 Agreement have been made by the Contractor and any Subcontractors to the Unemployment Compensation Fund.

§ 11.1.9 [omit]

...

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

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;~~and~~

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2.~~11.2.2.2;

.4 the Architect has certified the total Cost of the Work for the Project;

.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, if applicable, 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 warranties, and maintenance and instruction manuals; and

.10 the Construction Manager has submitted record drawings and "as-built" drawings.

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document ~~A201–2017.~~ A201. 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.

...

~~%~~ Twelve percent (12%) per annum

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§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of ~~A201–2017.~~ A201. However, for Claims arising from or relating to the

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Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201–2017~~ A201 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.

...

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

...

[ ] Arbitration pursuant to Article 15 of AIA Document ~~A201–2017~~A201

[**X**] Litigation in a court of competent jurisdiction

...

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

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

...

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

...

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document ~~A201–2017.~~A201.

...

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

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

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

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

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

...

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

...

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

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

...

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

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

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

...

§ 14.5.1 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 Douglas County, Nebraska.

§ 14.5.2 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.

§ 14.5.3 Use of Job Site and Security

§ 11.5.3.1 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.

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§ 14.5.3.2 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.

§ 14.5.3.3 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.

§ 14.5.4 Equal Opportunity in Employment

§ 14.5.4.1 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.

§ 14.5.4.2 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.

§ 14.5.5 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.

§ 14.5.6 Criminal History Checks

§ 14.5.6.1 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.

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§ 14.5.6.2 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.

§ 14.5.6.3 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.

§ 14.5.6.4 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.

§ 14.5.7 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.

§ 14.5.8 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.

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.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.

§ 14.5.9 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 to submit to the Owner, upon execution of the Agreement, the affidavit marked as Appendix D, 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.

§ 14.5.10 Claims for Consequential Damages

§ 14.5.10.1 Except as provided and subject to the provisions herein, the Construction Manager and the Owner waive claims against each other for consequential damages arising out of or relating to the subject matter of this Agreement.

§ 14.5.10.2 The mutual waiver in § 14.5.10.1 applies only to the extent: (1) the party against whom the claim for consequential damages is made has obtained and maintained the insurance coverages and limits required by the Agreement and the Contract Documents; (2) such insurance specifically allows claims for consequential damages up to the specific policy limits; (3) the insurance covers the event and consequential damages at issue, and (4) for such amounts in excess of the actual recovery of insurance proceeds by the claiming party.

§ 14.5.10.3 The mutual waiver in § 14.5.10.1 shall not apply to the following: (1) specific items of damage allowed for in this Agreement and in the Contract Documents; and (2) assessment of liquidated damages by the Owner against the Construction Manager, but only if provided and allowed for in the Agreement.

§ 14.5.10.4 Notwithstanding anything in the Agreement to the contrary, the Construction Manager waives all claims against the Owner for consequential damages incurred by the Construction Manager for any office expenses, for personnel, for loss of financing, business and reputation, and for loss of profit, except anticipated profit directly from the Work.

§ 14.5.11 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.

§ 14.5.12 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.

§ 14.5.13 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

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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.

§ 14.5.14 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.

§ 14.5.15 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.

§ 14.5.16 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.

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.4 AIA Document ~~A201™ 2017,~~ A201, General Conditions of the Contract for Construction

...

Project Statement, Appendix A
Efforts Schedule, Appendix B
Job Site Security Requirements, Appendix C
Form contractor affidavit, Appendix D

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Bill Koile, President Board of Education

Brent Suing, Project Executive

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AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
DC West Community Schools – Multi-Sport Activities Complex Project

THE OWNER:
(Name, legal status and address)
Douglas County School District 28-0015, a/k/a DC West Community Schools
A Nebraska political subdivision
401 S. Pine Street
Valley, NE 68064

THE OWNER'S DESIGNATED REPRESENTATIVE:
(Name, address and other information)
Rainwood Development Partners LLC
10340 N 84th Street
Omaha, NE 68122
("Owner's Representative")

THE ARCHITECT:
(Name, legal status and address)
Beringer Ciaccio Dennell Mabrey, Inc., d/b/a BCDM Architects
A Nebraska corporation
1015 N. 98th Street, Suite 300
Omaha, NE 68114

THE CONSTRUCTION MANAGER:
(Name, legal status, address, and other information)
Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction
A Nebraska corporation
14558 Portal Circle
La Vista, NE 68138

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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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 of 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 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.

§ 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

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and educational specifications and the standards set forth in Section 2.1.4 of AIA Document B201, 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.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 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. All Construction Documents used for construction purposes must be obtained by the Contractor directly from the Architect or the Owner immediately before commencing construction of the Work. The Contractor shall be responsible to ensure that such drawings and specifications contain all changes and revisions to date.

§ 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

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

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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), and the Contract Sum, when the Agreement is a Contractor Agreement (A101).

§ 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 Superintendent of Schools 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 15.1.5.3 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.

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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 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.

§ 1.2.3.4 Wherever materials or Work are specified to be "approved" or an approved pattern, make or design, the Contractor must have written approval from the Owner before installation of such materials or performance of such Work.

§ 1.2.3.5 Whenever the words "or equal" appear in connection with a material or article specified or shown in the contract documents by use of the name of a proprietary product or the name of a manufacturer or vendor of such material or article, any material or article which will fully perform the duties of the material or article so specified will be considered "equal" and satisfactory provided such material or article is of equivalent substance and function. If the words "or equal" do not appear in connection with such material or article, no substitute may be proposed in place of the material or article so specified.

§ 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

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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. Contractor shall bear all risk caused by submitting substitutions, including all costs. 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.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND CONSTRUCTION DOCUMENTS

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. 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

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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 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 Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Education hereby delegates to the Superintendent of Schools or designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent 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 Superintendent 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.

§ 2.2 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

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Owner but shall exercise proper precautions relating to the safe performance of the Work. 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.

§ 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 one (1) copy of the Construction Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct defective Work fails to correct 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 Superintendent of Schools.

§ 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.

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 Program Manager, 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

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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 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 matters which may in any way affect the Work or its performance. The Contractor represents and warrants that the Contractor 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 the Contractor's own investigations, the Contractor has satisfied itself 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 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 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 Neither the Owner nor the Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor 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

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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. The Contractor shall 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 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 AFIERA 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.

§ 3.2.6 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.

§ 3.2.7 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. 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.

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§ 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 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 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, 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

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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. Unless otherwise provided, in the Contract Documents, the Contractor will make any temporary connections to water and electrical supplies as required for construction purposes and the Owner will pay any water or electric bills during construction.

§ 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;

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§ 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.

§ 3.4.2.4 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 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. 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 its "covered employees", as defined below. Before beginning any Work on the Project, Contractor, and all Subcontractors and suppliers, 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

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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.

§ 3.4.9 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, agent, or subcontractor 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 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 the Substantial Completion date of the entire 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.

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§ 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 Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;

.2 Verify that the documents are in proper form and contain full information;

.3 Co-sign warranties when required;

.4 Bind all warranties 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 THE ENTIRE 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,

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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. 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. Contractor's obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. 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.

§ 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 notice to the Owner 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

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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. 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.

§ 3.9 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

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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.

§ 3.9.1.1 As directed by the Architect, there is to be held at a location designated by the Architect, 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, 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 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

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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.

§ 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.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner 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, 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 and the Owner 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.

§ 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.

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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 Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and 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.

§ 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 employs or retains a

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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 (professional liability) insurance coverage in the amounts and forms as specified in Article 11 of these General Conditions. 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 amounts and forms as specified in Article 11 of these General Conditions.

§ 3.12.11 The Contractor shall submit complete drawings, data and samples to the Architect at least fifteen (l5) 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

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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 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

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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, 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 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 (EXCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM,

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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: (I) 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.

§ 3.19 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.

§ 3.20 CONSTRUCTION WASTE MANAGEMENT

§ 3.20.1 CONSTRUCTION WASTE MANAGEMENT PLAN

The Contractor shall develop a Construction Waste Management Plan consistent with the requirements of the Contract Documents and Construction Documents and with the requirements of the U.S. Green Building Council. The purpose of such plan shall be to identify types and quantities of demolition, site-clearing and construction waste generated by

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the Work and to determine whether such waste materials will be salvaged, recycled or disposed of in a landfill or incinerator.

§ 3.20.2 SALVAGE AND RECYCLING OF NONHAZARDOUS MATERIAL

§ 3.20.2.1 Pursuant to the Construction Waste Management Plan, the Contractor shall identify and separate all nonhazardous demolition and/or construction waste materials at the Work site which may either be salvaged or be recycled. Salvageable or recyclable materials may include, but not be limited to, metals (including copper, brass, aluminum, structural steel and iron), wood materials, concrete, masonry, asphaltic concrete paving, gypsum board, acoustical ceiling panels and tiles, carpet, equipment, piping, plumbing fixtures, electrical wiring, electrical devices, lighting fixtures, conduit, glass and window systems and frames, and mechanical systems (including heating and ventilating systems units, pumps, and pipes and wiring attendant to such systems).

§ 3.20.2.2 All salvageable and recyclable nonhazardous Work site materials shall remain the sole property of the Owner, unless otherwise provided in the Contract Documents or Construction Documents.

§ 3.20.2.3 Salvageable and recyclable materials so identified and separated shall be inventoried by the Contractor and stored at the Work site in a secure location. All protection must be provided by the Contractor at its own expense and must be maintained throughout the storage period. Salvageable and recyclable materials must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled with the Owner's name and the Project name. Salvageable and recyclable materials 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. The Contractor shall be responsible for any loss through theft or destruction of such materials while on the Work site or other location under the direction and control of the Contractor. As required by the Contract Documents or Construction Documents or upon request of the Owner, the salvageable or recyclable materials shall be transferred to locations for storage, re-use or recycling as determined by the Owner in its sole discretion.

§ 3.20.3 INDEMNIFICATION FOR HAZARDOUS DEMOLITION OR CONSTRUCTION WASTE MATERIALS

In addition to complying with Section 10.4, the Contractor shall indemnify and hold harmless the Owner, Owner's board of education, Owner's consultants, Architect, Architect's consultants, and officers, agents and employees of any of them as follows:

§ 3.20.3.1 If the Contractor or any if its subcontractors fails or neglects to identify any hazardous demolition or construction waste materials or substances at the project site, fails or neglects to identify any hazardous salvageable or recyclable materials at or from 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) 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.

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.

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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.

§ 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 will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the final payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, 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 twice per week (or more per week when deemed necessary by the Owner's Superintendent 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, a minimum of two 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, 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 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.

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§ 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.

§ 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 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 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 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.

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§ 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 through 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 shall reply within 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. Unless otherwise agreed to by the Owner, all subcontractors shall be procured in accordance with Neb. Rev. Stat. §§ 73-101 through 73-106, as applicable. 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.

§ 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

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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

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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.

§ 6.1.4 Additional provisions for separate contracts are included in the Specifications.

§ 6.2 CONTRACTOR'S RESPONSIBILITY

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and 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. Contractor shall review Owner's contract with Owner's separate contractors and become familiar with the requirements and scope of services contained therein.

§ 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 so 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 or others in connection with the Work in accordance with the

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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.

§ 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 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 before commencing such Work shall constitute cause for rejection of request for additional compensation for such work by the Contractor.

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§ 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 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 15% of the total cost of the Change in the Work.

§ 7.1.8 Allowance balances 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. NO WORK SHALL BE PERFORMED ON A CHANGE ORDER REQUEST UNTIL A FORMAL CHANGE ORDER HAS BEEN APPROVED IN WRITING BY THE OWNER.

§ 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 adjustment shall be made:

§ 7.3.3.1.1 Cost of Work: The actual cost as determined by lump sum pricing 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;

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.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 then 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 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. 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. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. 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.

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§ 7.4.2 Allowance balances 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 (or Amendment Number 1, if Contractor is a Construction Manager at Risk) 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 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 stated in the Contract Documents 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.

§ 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.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time.

§ 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.

§ 8.3 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.

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§ 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.

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.

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§ 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 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 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.

§ 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. 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.

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§ 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 with the Owner's name and the 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 the Owner. 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.

§ 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 will not be a representation that the Architect in writing to the Owner 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.

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§ 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. The Owner shall not be deemed in default by reason of withholding payment as provided for in this Section. 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.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) 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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§ 9.6.3 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.

§ 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 provide 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 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 school operations or other intended use or prevent the Owner from performing its preparatory tasks to make the Work suitable as a school building. 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 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 list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the 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 Substantial 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

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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.

§ 9.9.7 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project and Contractor has purchased Builder's Risk Insurance pursuant to Section 11.3.1.2, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage would not otherwise provide such coverage. By appropriate Change Order, the cost of the endorsement shall be charged to the Owner.

§ 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 (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

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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:

.1 Written certifications required by Section 10.6, 10.7, and 10.8;
.2 Final list of subcontractors (AIA Document G705);
.3 Contractor's warranties, organized as required elsewhere in the Contract Documents;
.4 Maintenance and Instruction Manuals;
.5 Owner's Final Completion Certificate; and
.6 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, sepia, 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.
.7 Return of any Owner facility and buildings door and entryway keys, if any, provided to Contractor to facility work.

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

§ 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 Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof.

§ 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 Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof.

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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 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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§ 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 or other hazardous materials 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.

§ 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 let 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

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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. The use or storage of explosives or other hazardous materials shall not be permitted on this project. 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 Date of Substantial Completion and/or Final Completion.

§ 10.4.3 IF CONTRACTOR KNOWINGLY 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.

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§ 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 KNOWINGLY FAILS OR NEGLECTS TO TAKE REASONABLE STEPS TO IDENTIFY HAZARDOUS MATERIALS OR SUBSTANCES AT THE PROJECT SITE, KNOWINGLY FAILS OR NEGLECTS TO GIVE WRITTEN NOTICE OF THE EXISTENCE OF HAZARDOUS MATERIALS OR SUBSTANCES IDENTIFIED AT THE PROJECT SITE TO THE OWNER AND ARCHITECT, OR KNOWINGLY FAILS OR NEGLECTS TO PROPERLY RENDER THE IDENTIFIED 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 (EXCLUDING THE WORK ITSELF) 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.

§ 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 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.6.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials 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."

§ 10.6.2 Final Payment shall not be made until this written certification has been received.

§ 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

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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

§ 10.8 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

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

See AIA A133, Exhibit B.

(Paragraphs deleted)

§ 11.2 OWNER'S LIABILITY INSURANCE

See AIA A133, Exhibit B.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 BUILDER'S RISK INSURANCE

§ 11.3.1.1 See AIA A133, Exhibit B.

§ 11.3.1.2 This property insurance for the Project 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. Sub-limits will apply with respect to transit and off-site insurance coverages. Contractor shall consult and coordinate with Owner on the sub-limit levels for transit and off-site insurance coverage. Contractor shall be responsible for any loss of materials in excess of the applicable transit and off-site storage sub-limit coverage for the Project.

§ 11.3.1.3 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 11.3.7.

§ 11.3.1.4 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 Subcontractor not performing work at the Project Site.

(Paragraph deleted)

§ 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; 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, may 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 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the Project 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

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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.

§ 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 thirty (30) calendar days' prior written notice has been given to the Contractor.

§ 11.3.7 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 11.3.7. 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 arising out of Contractor's Work.

§ 11.3.8 ADJUSTMENT OF LOSS

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 11.3.10. Each Contractor shall be a named insured. 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.

§ 11.3.9 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. 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.

§ 11.3.10 ADJUSTMENT AND SETTLEMENT OF LOSS BY OWNER

The Owner as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all subcontractors their just shares of insurance proceeds received by the Subcontractor, and by appropriate agreements shall require subcontractors to make payment to their sub-subcontractors in similar manner. 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 under the insurance proceeds.

§ 11.3.11 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.

§ 11.4 PERFORMANCE AND PAYMENT BOND

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§ 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 Contract Sum. The Contractor will require all subcontractors to provide a dual obligee payment and performance bond naming the Owner and the Contractor in the amount of 100% of the subcontract amount. The Contractor also will require all material suppliers to provide a dual obligee supply bond naming the Owner and the Contractor in the amount of 100% of the material supply contract. The Contractor will provide a payment and performance bond in the amount of the difference between the Contract Sum and the amounts of subcontractor and material supplier bonds.

§ 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.

§ 11.4.5 Owner, in its sole discretion, may take any actions it deems necessary or prudent with regard to payments certified to be due to Contractor upon notice of third party claims filed or reasonable evidence indicating probably filing of such claims against any payment bond supplied by Contractor or reasonable evidence of the failure of the Contractor to make payments property to Subcontractors for labor, materials or equipment. Such actions by the Owner may include, but not be limited to, withholding payments certified to be due to Contractor, joint-paying any checks to the Contractor and the bond Surety, and/or following Contract payment instructions from the bond Surety. The Owner shall not be deemed in default by reason of any actions or inactions regarding payments as provided for in this Section. Any actions or inactions by the Owner with regard to payments to Contractor shall not be deemed nor constitute a waiver by Owner of any rights, defenses or claims against Contractor.

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

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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 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 THE ENTIRE 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

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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 effect 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 Douglas County, Nebraska.

§ 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 Contact 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 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.

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§ 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 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 applicable 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 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.

§ 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 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 Substantial Completion of the Work.

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§ 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 race, religion, age, disability, sex, or national origin. 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 race, religion, age, disability, sex, or national origin.

§ 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., 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 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.
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.

§ 13.12 RECORDS

§ 13.12.1 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.

§ 13.12.2 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

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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.

§ 13.12.3 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.

§ 13.12.4 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.

§ 13.12.5 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.

§ 13.13 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

§ 13.13.1 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.

§ 13.15.2 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.

§ 13.15.3 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 FOR CAUSE

§ 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 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 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.

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§ 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** 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** 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, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. 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

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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 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

Except as otherwise provided in Section 8.3, 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 or should have known of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written

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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 adverse, 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 the following:

.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; or

.2 (a) 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 approximately one (1.0) inch of rainfall or the equivalent of approximately one (1.0) inch of rainfall if precipitation is other than rainfall; and (b) 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 day that the site conditions are detrimentally impacted. "Dry-out" days are in addition to any adverse weather days for the work day in question.

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§ 15.1.5.4.2 Adverse weather means weather that is more severe and abnormal, in magnitude or duration or both, than bad weather that should be expected and anticipated for the season and the Project location.

§ 15.1.5.4.3 Actual adverse weather days means days where adverse weather, or the results of adverse weather, prevented Contractor's work on critical Work activities for fifty percent (50%) or more of Contractor's scheduled work day.

§ 15.1.5.4.4 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

§ 15.1.5.4.5 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.

§ 15.1.5.4.6 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.

§ 15.1.5.7 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, rain 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

§ 15.1.6.1 Except as provided and subject to the provisions herein, the Contractor and the Owner waive claims against each other for consequential damages arising out of or relating to the subject matter of this Agreement.

§ 15.1.6.2 The mutual waiver in § 15.1.6.1 applies only to the extent: (1) the party against whom the claim for consequential damages is made has obtained and maintained the insurance coverages and limits required by the Agreement and the Contract Documents; (2) such insurance specifically allows claims for consequential damages up to the specific policy limits; (3) the insurance covers the event and consequential damages at issue, and (4) for such amounts in excess of the actual recovery of insurance proceeds by the claiming party.

§ 15.1.6.3 The mutual waiver in § 15.1.6.1 shall not apply to the following: (1) specific items of damage allowed for in this Agreement and in the Contract Documents; and (2) assessment of liquidated damages by the Owner against the Contractor, but only if provided and allowed for in the Agreement.

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§ 15.1.6.4 Notwithstanding anything in the Agreement to the contrary, the Contractor waives all claims against the Owner for consequential damages incurred by the Contractor for any office expenses, for personnel, for loss of financing, business and reputation, and for loss of profit, except anticipated profit directly from the Work.

§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES

§ 15.2.1 RECOMMENDATION OF ARCHITECT

Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within fourteen (14) calendar days of the receipt of the Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the Architect 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 Architect in making a written recommendation.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within fourteen (14) calendar days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum or Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraphs deleted)

§ 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 Douglas County, Nebraska, 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 though litigation pursuant to Section 13.1.

§ 15.4 NO ARBITRATION

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§ 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.

(Paragraphs deleted)

§ 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.

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DC West Community Schools – Multi-Sport Activities Complex Project

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(Name, legal status and address)
Douglas County School District 28-0015, a/k/a DC West Community Schools
A Nebraska political subdivision
401 S. Pine Street
Valley, NE 68064

THE OWNER'S DESIGNATED REPRESENTATIVE:
(Name, address and other information)
Rainwood Development Partners LLC
10340 N 84th Street
Omaha, NE 68122
("Owner's Representative")

...

(Name, legal status and address)
Beringer Ciaccio Dennell Mabrey, Inc., d/b/a BCDM Architects
A Nebraska corporation
1015 N. 98th Street, Suite 300
Omaha, NE 68114

THE CONSTRUCTION MANAGER:
(Name, legal status, address, and other information)
Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction
A Nebraska corporation
14558 Portal Circle
La Vista, NE 68138

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~~(Topics and numbers in bold are section headings.)~~(Numbers and Topics in Bold are Section Headings)

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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 of 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.

§ 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

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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, 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.

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§ 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. All Construction Documents used for construction purposes must be obtained by the Contractor directly from the Architect or the Owner immediately before commencing construction of the Work. The Contractor shall be responsible to ensure that such drawings and specifications contain all changes and revisions to date.

§ 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

AIA:	American Institute of Architects
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute

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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), and the Contract Sum, when the Agreement is a Contractor Agreement (A101).

§ 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 Superintendent of Schools 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 15.1.5.3 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 ease of such conflict, may interpret or construe,

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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.

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§ 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.

§ 1.2.3.4 Wherever materials or Work are specified to be "approved" or an approved pattern, make or design, the Contractor must have written approval from the Owner before installation of such materials or performance of such Work.

§ 1.2.3.5 Whenever the words "or equal" appear in connection with a material or article specified or shown in the contract documents by use of the name of a proprietary product or the name of a manufacturer or vendor of such material or article, any material or article which will fully perform the duties of the material or article so specified will be considered "equal" and satisfactory provided such material or article is of equivalent substance and function. If the words "or equal" do not appear in connection with such material or article, no substitute may be proposed in place of the material or article so specified.

§ 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

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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. Contractor shall bear all risk caused by submitting substitutions, including all costs. 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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§ 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.~~ All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. 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.

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§ 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,~~ 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 Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Education hereby delegates to the Superintendent of Schools or designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent 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 Superintendent 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.

§ 2.2.1 ~~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.

...

§ 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

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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. 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.

§ 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 (1) copy of the ~~Contract~~ Construction Documents for purposes of making reproductions pursuant to Section 1.5.2.
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If the Contractor fails to correct defective Work fails to correct 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 Superintendent of Schools.

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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.

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§ 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 Program Manager, 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~~ 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 matters which may in any way affect the Work or its performance. The Contractor represents and warrants that the Contractor 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 the Contractor's own investigations, the Contractor has satisfied itself 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 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~~ 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~~ Neither the Owner nor the Contractor is 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.

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§ 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~~ The Contractor shall 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 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 AFIERA 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.

§ 3.2.6 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.

§ 3.2.7 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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§ 3.3.2 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 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 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, 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

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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. Unless otherwise provided, in the Contract Documents, the Contractor will make any temporary connections to water and electrical supplies as required for construction purposes and the Owner will pay any water or electric bills during construction.

§ 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;

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§ 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.

§ 3.4.2.4 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 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. 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 its "covered employees", as defined below. Before beginning any Work on the Project, Contractor, and all Subcontractors and suppliers, 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

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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.

§ 3.4.9 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, agent, or subcontractor 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 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 the Substantial Completion date of the entire 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

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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 Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;

.2 Verify that the documents are in proper form and contain full information;

.3 Co-sign warranties when required;

.4 Bind all warranties 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.

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§ 3.5.9 ALL WARRANTIES SHALL COMMENCE NO EARLIER THAN THE SUBSTANTIAL COMPLETION DATE OF THE ENTIRE 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~~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. 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. Contractor's obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. 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.

§ 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

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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 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. 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.~~objection, unless required to do so by the terms of the Construction Documents.

...

.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;

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...

.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.

...

§ 3.9.1 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.

§ 3.9.1.1 As directed by the Architect, there is to be held at a location designated by the Architect, 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.

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§ 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~~ ten (10) calendar days after being awarded the Contract, 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 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.

§ 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.

§ 3.10.3 The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to the Owner 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

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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, 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 and the Owner 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.

§ 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.

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§ 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.

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§ 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 employs or 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 (professional liability) insurance coverage in the amounts and forms as specified in Article 11 of these General Conditions. 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 amounts and forms as specified in Article 11 of these General Conditions.

§ 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 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

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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

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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, 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 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 (EXCLUDING THE WORK ITSELF) 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

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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: (I) 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.

§ 3.19 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.

§ 3.20 CONSTRUCTION WASTE MANAGEMENT

§ 3.20.1 CONSTRUCTION WASTE MANAGEMENT PLAN

The Contractor shall develop a Construction Waste Management Plan consistent with the requirements of the Contract Documents and Construction Documents and with the requirements of the U.S. Green Building Council. The purpose of such plan shall be to identify types and quantities of demolition, site-clearing and construction waste generated by the Work and to determine whether such waste materials will be salvaged, recycled or disposed of in a landfill or incinerator.

§ 3.20.2 SALVAGE AND RECYCLING OF NONHAZARDOUS MATERIAL

§ 3.20.2.1 Pursuant to the Construction Waste Management Plan, the Contractor shall identify and separate all nonhazardous demolition and/or construction waste materials at the Work site which may either be salvaged or be recycled. Salvageable or recyclable materials may include, but not be limited to, metals (including copper, brass, aluminum, structural steel and iron), wood materials, concrete, masonry, asphaltic concrete paving, gypsum board, acoustical ceiling panels and tiles, carpet, equipment, piping, plumbing fixtures, electrical wiring, electrical devices, lighting fixtures, conduit, glass and window systems and frames, and mechanical systems (including heating and ventilating systems units, pumps, and pipes and wiring attendant to such systems).

§ 3.20.2.2 All salvageable and recyclable nonhazardous Work site materials shall remain the sole property of the Owner, unless otherwise provided in the Contract Documents or Construction Documents.

§ 3.20.2.3 Salvageable and recyclable materials so identified and separated shall be inventoried by the Contractor and stored at the Work site in a secure location. All protection must be provided by the Contractor at its own expense and must be maintained throughout the storage period. Salvageable and recyclable materials must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled with the Owner's name and the Project name. Salvageable and recyclable materials 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. The Contractor shall be responsible for

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any loss through theft or destruction of such materials while on the Work site or other location under the direction and control of the Contractor. As required by the Contract Documents or Construction Documents or upon request of the Owner, the salvageable or recyclable materials shall be transferred to locations for storage, re-use or recycling as determined by the Owner in its sole discretion.

§ 3.20.3 INDEMNIFICATION FOR HAZARDOUS DEMOLITION OR CONSTRUCTION WASTE MATERIALS

In addition to complying with Section 10.4, the Contractor shall indemnify and hold harmless the Owner, Owner's board of education, Owner's consultants, Architect, Architect's consultants, and officers, agents and employees of any of them as follows:

§ 3.20.3.1 If the Contractor or any if its subcontractors fails or neglects to identify any hazardous demolition or construction waste materials or substances at the project site, fails or neglects to identify any hazardous salvageable or recyclable materials at or from 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) 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.

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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.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during ~~construction until the date the Architect issues the final Certificate for Payment.~~ construction, until the final payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided ~~in~~ 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 twice per week (or more per week when deemed necessary by the Owner's Superintendent 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

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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, a minimum of two 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, 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.

...

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 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.

§ 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

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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~~ 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 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 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.

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§ 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 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~~ shall reply within 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. Unless otherwise agreed to by the Owner, all subcontractors shall be procured in accordance with Neb. Rev. Stat. §§ 73-101 through 73-106, as applicable. 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.

...

§ 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.

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§ 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~~

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~~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.

...

§ 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.

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§ 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.~~Additional provisions for separate contracts are included in the Specifications.

§ 6.2 ~~MUTUAL RESPONSIBILITY~~CONTRACTOR'S RESPONSIBILITY

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and 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. Contractor shall review Owner's contract with Owner's separate contractors and become familiar with the requirements and scope of services contained therein.

§ 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.~~ 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 so 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.

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§ 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 or others 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.~~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.

...

§ 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

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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 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 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 15% of the total cost of the Change in the Work.

§ 7.1.8 Allowance balances 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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.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. NO WORK SHALL BE PERFORMED ON A CHANGE ORDER REQUEST UNTIL A FORMAL CHANGE ORDER HAS BEEN APPROVED IN WRITING BY THE OWNER.

...

§ 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 adjustment shall be made:

§ 7.3.3.1.1 Cost of Work: The actual cost as determined by lump sum pricing 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.

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.2 ~~Unit prices stated in the Contract Documents or subsequently agreed upon;~~To Subcontractor for work performed by other then 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.

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§ 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. 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.

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~~**§ 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. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. 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 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 (or Amendment Number 1, if Contractor is a Construction Manager at Risk) 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 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.

...

§ 8.2.1 Time limits stated in the Contract Documents 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.~~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 and Final Completion within the Contract Time.

§ 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.

...

§ 8.3.1 ~~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~~

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~~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.

§ 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

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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.

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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 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 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~~

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~~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.

§ 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. 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

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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 with the Owner's name and the 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 the Owner. 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.

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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 will not be a representation that the Architect in writing to the Owner 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.

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§ 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.

...

§ 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.

...

§ 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. The Owner shall not be deemed in default by reason of withholding payment as provided for in this Section. 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.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) 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.

~~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 provide 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.~~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

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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 school operations or other intended use or prevent the Owner from performing its preparatory tasks to make the Work suitable as a school building. 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 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 list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the 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~~ prepare, sign and issue Owner's Certificate of Substantial 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.

...

§ 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.~~ stage. 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

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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.

§ 9.9.7 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project and Contractor has purchased Builder's Risk Insurance pursuant to Section 11.3.1.2, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage would not otherwise provide such coverage. By appropriate Change Order, the cost of the endorsement shall be charged to the Owner.

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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 (1) using AIA Document G706 an affidavit that payrolls, bills for materials and equipment, and other

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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 Owner,~~ 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:

.1 Written certifications required by Section 10.6, 10.7, and 10.8;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.4 Maintenance and Instruction Manuals;

.5 Owner's Final Completion Certificate; and

.6 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, sepia, 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.

.7 Return of any Owner facility and buildings door and entryway keys, if any, provided to Contractor to facility work.

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.

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§ 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 Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof.

§ 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 Owner's Board of Education 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 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.

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§ 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~~ 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 or other hazardous materials 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~~

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~~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.

...

§ 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.~~ 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 let 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.~~

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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. The use or storage of explosives or other hazardous materials shall not be permitted on this project. 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 Date of Substantial Completion and/or Final Completion.

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§ 10.4.3 IF CONTRACTOR KNOWINGLY 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 KNOWINGLY FAILS OR NEGLECTS TO TAKE REASONABLE STEPS TO IDENTIFY HAZARDOUS MATERIALS OR SUBSTANCES AT THE PROJECT SITE, KNOWINGLY FAILS OR NEGLECTS TO GIVE WRITTEN NOTICE OF THE EXISTENCE OF HAZARDOUS MATERIALS OR SUBSTANCES IDENTIFIED AT THE PROJECT SITE TO THE OWNER AND ARCHITECT, OR KNOWINGLY FAILS OR NEGLECTS TO PROPERLY RENDER THE IDENTIFIED 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 (EXCLUDING THE WORK ITSELF) 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.

§ 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 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.6.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials 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."

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§ 10.6.2 Final Payment shall not be made until this written certification has been received.

§ 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

§ 10.8 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.

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See AIA A133, Exhibit B.

~~**§ 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 or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

- ~~**.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~
- ~~**.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 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.~~

~~**§ 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~~

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~~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.~~

~~§ 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.~~

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~See AIA A133, Exhibit B.

...

~~§ 11.3.1~~ ~~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, 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.~~

BUILDER'S RISK INSURANCE

~~§ 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 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.~~See AIA A133, Exhibit B.

~~§ 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 Contractor, 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.~~This property insurance for the Project 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. Sub-limits will apply with respect to transit and off-site insurance coverages. Contractor shall consult and coordinate with Owner on the sub-limit levels for transit and off-site insurance coverage. Contractor shall be responsible for any loss of materials in excess of the applicable transit and off-site storage sub-limit coverage for the Project.

~~§ 11.3.1.3~~ ~~If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~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 11.3.7.

~~§ 11.3.1.4~~ ~~This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~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 Subcontractor not performing work at the Project Site.

~~**§ 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 Owner, at the Owner's option, may 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~~ Project 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.

§ 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~~ thirty (30) calendar days' prior written notice has been given to the Contractor.
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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~~ 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 ~~herein.~~ in this Section 11.3.7. 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 arising out of Contractor's Work.

§ 11.3.8 ADJUSTMENT OF LOSS
A loss insured under the Owner's ~~property~~ 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 11.3.10. Each Contractor shall be a named insured. 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.

§ 11.3.9 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

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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.~~ 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.

§ 11.3.10 ADJUSTMENT AND SETTLEMENT OF LOSS BY OWNER

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.~~ insurers. The Contractor shall pay all subcontractors their just shares of insurance proceeds received by the Subcontractor, and by appropriate agreements shall require subcontractors to make payment to their sub-subcontractors in similar manner. 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 under the insurance proceeds.

§ 11.3.11 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.

§ 11.4 ~~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 Contract Sum. The Contractor will require all subcontractors to provide a dual obligee payment and performance bond naming the Owner and the Contractor in the amount of 100% of the subcontract amount. The Contractor also will require all material suppliers to provide a dual obligee supply bond naming the Owner and the Contractor in the amount of 100% of the material supply contract. The Contractor will provide a payment and performance bond in the amount of the difference between the Contract Sum and the amounts of subcontractor and material supplier bonds.

§ 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

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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.

§ 11.4.5 Owner, in its sole discretion, may take any actions it deems necessary or prudent with regard to payments certified to be due to Contractor upon notice of third party claims filed or reasonable evidence indicating probably filing of such claims against any payment bond supplied by Contractor or reasonable evidence of the failure of the Contractor to make payments property to Subcontractors for labor, materials or equipment. Such actions by the Owner may include, but not be limited to, withholding payments certified to be due to Contractor, joint-paying any checks to the Contractor and the bond Surety, and/or following Contract payment instructions from the bond Surety. The Owner shall not be deemed in default by reason of any actions or inactions regarding payments as provided for in this Section. Any actions or inactions by the Owner with regard to payments to Contractor shall not be deemed nor constitute a waiver by Owner of any rights, defenses or claims against Contractor.

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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.

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§ 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~~

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~~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 THE ENTIRE 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.

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~~ effect whether or not final payment has been made.

...

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 Douglas County, Nebraska.

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§ 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 Contact 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 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 applicable 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 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.

§ 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.

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§ 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~~ ten (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.~~

§ 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 race, religion, age, disability, sex, or national origin. 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 race, religion, age, disability, sex, or national origin.

§ 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., 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 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

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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.
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.

§ 13.12 RECORDS

§ 13.12.1 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.

§ 13.12.2 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.

§ 13.12.3 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.

§ 13.12.4 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.

§ 13.12.5 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.

§ 13.13 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

§ 13.13.1 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.

§ 13.15.2 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.

§ 13.15.3 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 TERMINATION BY THE CONTRACTOR FOR CAUSE

§ 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.

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.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

...

.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.

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§ 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:

...

§ 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.

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§ 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.

...

§ 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

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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 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.~~ 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~~ Except as otherwise provided in Section 8.3, 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 or should have known 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 ~~10.4.~~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.

...

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§ 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 adverse, 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 the following:

.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; or

.2 (a) 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 approximately one (1.0) inch of rainfall or the equivalent of approximately one (1.0) inch of rainfall if precipitation is other than rainfall; and (b) 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 day that the site conditions are detrimentally impacted. "Dry-out" days are in addition to any adverse weather days for the work day in question.

§ 15.1.5.4.2 Adverse weather means weather that is more severe and abnormal, in magnitude or duration or both, than bad weather that should be expected and anticipated for the season and the Project location.

§ 15.1.5.4.3 Actual adverse weather days means days where adverse weather, or the results of adverse weather, prevented Contractor's work on critical Work activities for fifty percent (50%) or more of Contractor's scheduled work day.

§ 15.1.5.4.4 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

§ 15.1.5.4.5 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.

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§ 15.1.5.4.6 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.

§ 15.1.5.7 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, rain 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.

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~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~**§ 15.1.6.1** Except as provided and subject to the provisions herein, the Contractor and the Owner waive claims against each other for consequential damages arising out of or relating to the subject matter of this Agreement.

§ 15.1.6.2 The mutual waiver in § 15.1.6.1 applies only to the extent: (1) the party against whom the claim for consequential damages is made has obtained and maintained the insurance coverages and limits required by the Agreement and the Contract Documents; (2) such insurance specifically allows claims for consequential damages up to the specific policy limits; (3) the insurance covers the event and consequential damages at issue, and (4) for such amounts in excess of the actual recovery of insurance proceeds by the claiming party.

~~**.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.~~**§ 15.1.6.3** The mutual waiver in § 15.1.6.1 shall not apply to the following: (1) specific items of damage allowed for in this Agreement and in the Contract Documents; and (2) assessment of liquidated damages by the Owner against the Contractor, but only if provided and allowed for in the Agreement.

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~**§ 15.1.6.4** Notwithstanding anything in the Agreement to the contrary, the Contractor waives all claims against the Owner for consequential damages incurred by the Contractor for any office expenses, for personnel, for loss of financing, business and reputation, and for loss of profit, except anticipated profit directly from the Work.

§ 15.2 ~~INITIAL DECISION~~RESOLUTION OF CLAIMS AND DISPUTES

§ 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 will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ **RECOMMENDATION OF ARCHITECT**

Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation ~~of any Claim~~ or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless ~~30~~ thirty (30) calendar 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~~

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~~Contractor and persons or entities other than the Owner.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ~~ten~~ fourteen (14) calendar days of the receipt of ~~a~~ the 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.~~ Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the ~~Initial Decision Maker~~ Architect 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.~~Architect in making a written recommendation.

§ 15.2.4 If the ~~Initial Decision Maker~~ Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ~~ten~~ fourteen (14) calendar days after receipt of such request, and shall either ~~(1)~~ provide a response on the requested supporting data, ~~(2)~~ advise the ~~Initial Decision Maker~~ Architect when the response or supporting data will be furnished or ~~(3)~~ advise the ~~Initial Decision Maker~~ Architect 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.~~Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum or Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 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.~~Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.6.1~~ ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 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 waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.2.7~~ ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

~~§ 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 ~~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

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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 is located,~~ equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within Douglas County, Nebraska, 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 ~~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.~~ 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.

~~**§ 15.4.1.1** 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).~~

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~~**§ 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.~~

§ 15.5 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.~~**§ 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.~~

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AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 15th day of April in the year 2024
(In words, indicate day, month and year.)

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

DC West Community Schools – Multi-Sport Activities Complex Project

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

Douglas County School District 28-0015, a/k/a DC West Community Schools
A Nebraska political subdivision
401 S. Pine Street
Valley, NE 68064

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

Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction
A Nebraska corporation
14558 Portal Circle
La Vista, NE 68138

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

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.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2.

§ B.2.2 Liability Insurance

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

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§ B.2.3 Required Property Insurance

§ B.2.3.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Nebraska, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
Not applicable	

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
Not applicable	

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions except the Owner shall be responsible for all losses not caused by the willful or negligent acts or omissions of Construction Manager or any employees, agents, representatives or subcontractors of Construction Manager.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

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§ B.2.4 Optional Extended Property Insurance.
The Owner may purchase and maintain the insurance selected and described below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[ ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.
The Owner may purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

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[ ] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) at least five business days after execution of the Contract and prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured all of Construction Manager's insurance policies, except Construction Manager's workers compensation insurance and professional liability insurance, if any. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies and any endorsements will not be canceled, reduced, or restricted for any reason, other than nonpayment of premium, until at least 30 calendar days' prior written notice of such cancellation, reduction, or restriction has been given to the Owner and Construction Manager. If any of the insurance coverages are required to remain in force after final payment, an additional certificate of insurance, policy, and endorsement evidencing continuation of such insurance coverage, including coverage for completed operations, shall be submitted with the final Certificate for Payment, as required by AIA A201 General Conditions as amended for this Project, and thereafter upon renewal or replacement of such coverage. Information concerning reduction or restriction of coverage on account of revised limits or claims paid under the General Aggregate, or cancellation or expiration of the insurance, shall be furnished by written notice to the Owner from the Construction Manager within three business days of the date Construction Manager knew or should have known of the cancellation, reduction, or restriction. At least 30 calendar days prior to the date of expiration of any required insurance policy, Construction Manager shall provide Owner written notice of the impending expiration. In addition, Construction Manager shall also provide copies of all policies, declarations, and endorsements for such insurance to Owner as required by the AIA A201 General Conditions as amended for this Project. The Construction Manager shall retain all required certificates of insurance for the duration of the Project and for five years thereafter.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager. If the insurance required by this Section B.3.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager and all Subcontractors shall cause the commercial general liability, automobile liability, excess liability, and any other insurance required by the Agreement, with the exception of Workers' Compensation insurance and professional liability insurance if any, to be endorsed coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services

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Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.1.4 Occurrence Basis. All insurance policies shall be written on an occurrence basis.

§ B.3.1.5 Waiver of Subrogation. All insurance policies shall contain a blanket waiver of subrogation in favor of Owner, Architect and Architect's consultants 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.

§ B.3.1.6 Primary Non-Contributory. All insurance policies shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ B.3.1.7 All 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.

§ B.3.1.8 Subcontractor Insurance. The Construction Manager shall require all subcontractors to provide and maintain separate Commercial General Liability, Automobile Liability, Workers' Compensation, Employer's Liability, Professional Liability (if applicable), and Umbrella Excess Liability insurance coverages at the subcontractors' own expense. Such subcontractor insurance policies shall include and meet all of the requirements contained in this Article B.3.1.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager and each of the Construction Manager'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 Construction Manager's operations under the Contract whether such operations be by Construction Manager 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, in the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Nebraska. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions. The insurance required by this Section shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Insurance coverages shall be written on an occurrence 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 Construction Manager'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. The limits of liability for such insurance shall be in at least the following amounts as specified below.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence basis with annual unencumbered policy limits of not less than One Million Dollars ($ 1,000,000.00) each occurrence, and Two Million Dollars ($ 2,000,000.00) general aggregate, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

.2 personal injury and advertising injury, with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property, in broad form and with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate;

.4 bodily injury or property damage arising out of the Work and out of products and completed operations, with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate, said coverage to be maintained for three years after Final Completion (to be maintained for a period of three years after Final Payment; Construction Manager shall continue to provide evidence of such coverage to Owner on an annual basis during this period and

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Owner shall be named by endorsement as an Additional Insured for such coverage) and must include Completed Operations coverage for Construction Manager, its subcontractors, and Owner;

.5 the Construction Manager's contractual liability, including but not limited to construction contracts and subcontracts and Construction Manager's indemnity obligations under the General Conditions with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate;

.6 damages resulting from premises operations, with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate; and

.7 General Aggregate per Project endorsement.

§ B.3.2.2.2 The Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under the General Conditions arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.2.3 Commercial General Liability miscellaneous provisions:

.1 Deductible for the insurance policy shall not exceed $10,000 per occurrence;

.2 Additional insured endorsement shall cover vicarious liability, including completed operations;

.3 Policy shall have removed fellow employee exclusion;

.4 Policy may contain a modified notice of occurrence for supervisors and up; and

.5 Policy may exclude coverage for asbestos, nuclear energy, engineer's and architect's errors and omissions.

§ B.3.2.3 Automobile Liability written on an occurrence basis covering vehicles owned, hired and non-owned, or any other vehicles used, by the Construction Manager, with a combined single policy limits of not less than One Million Dollars ($ 1,000,000.00) per occurrence, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.5.1 A copy of a current certificate of insurance showing statutory workers' compensation insurance coverage for the Construction Manager's employees providing services on a Project is required for the duration of the Project. The Construction Manager must provide a certificate of insurance to the Owner upon execution of the Contract. If the coverage period shown on the Construction Manager's current certificate of insurance ends during the duration of the

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Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of insurance with the Owner showing that coverage has been extended.

§ B.3.2.5.1.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by the Owner.

§ B.3.2.5.1.2 Persons providing services on the Project include all persons or entities performing all or part of the services the Construction Manager 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, direct or leased employees of any such entity, or direct or leased employees of any entity that furnishes persons to provide services on the Project.

§ B.3.2.5.1.3 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.

§ B.3.2.5.1.4 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

.1 A separate and current certificate of insurance, 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 days after receipt by the Construction Manager, a new certificate of insurance showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ B.3.2.5.1.5 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ B.3.2.5.1.6 The Construction Manager shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ B.3.2.5.1.7 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

.1 Provide coverage for all of its employees providing services on the Project for the duration of the Project;

.2 Provide to the Construction Manager, 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 Construction Manager, 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 Construction Manager:

- **.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 ten 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.

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§ B.3.2.5.1.8 By signing the Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ B.3.2.5.1.9 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000.00) each accident, One Million Dollars ($ 1,000,000.00) disease each employee, and One Million Dollars ($ 1,000,000.00) disease policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager, or any Subcontractor, is required to furnish professional services as part of the Work, the Construction Manager or Subcontractor, whichever is actually performing the Work, shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than the following:

.1	Annual Unencumbered Limits of Liability (minimum)	Occurrence	Aggregate
	Contract Sum < $500,000	$1,000,000	$1,000,000
	$ 500,000 ≤ Contract Sum < $ 10,000,000	$2,000,000	$2,000,000
	Contract Sum ≥ $ 10,000,000	$3,000,000	$3,000,000

.2 Aggregate per Project Endorsement

.3 Deductible for the insurance policy shall not exceed $10,000 per occurrence;

.4 The insurance shall remain in full force and effect for a period of three (3) years after the termination of the Agreement or the completion of the Construction Manager's services hereunder, whichever occurs later in time;

.5 The obligation to maintain Professional Liability insurance coverage shall survive termination of the Agreement;

.6 The policies shall provide a blanket waiver of subrogation in favor of Owner and Architect; and

.7 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Professional Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Professional Liability insurance limits.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate.

§ B.3.2.10 [omit]

§ B.3.2.11 [omit]

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than One Million Dollar ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate.

§ B.3.2.13 Umbrella Excess Liability with policy limits of not less than the following amounts:

.1	Annual Unencumbered Limits of Liability (minimum)	**Occurrence**	**Aggregate**
	Contract Sum < $500,000	$1,000,000	$1,000,000
	$ 500,000 ≤ Contract Sum < $ 10,000,000	$2,000,000	$2,000,000
	$ 10,000,000 ≤ Contract Sum < $ 25,000,000	$5,000,000	$5,000,000
	Contract Sum ≥ $ 25,000,000	$10,000,000	$10,000,000

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.2 Aggregate per Project Endorsement; and

.3 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Umbrella Excess Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Umbrella Excess Liability insurance limits.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Nebraska. The Construction Manager'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. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[ ] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

[ ] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than ($) per claim and ($) in the aggregate, for Work within fifty (50) feet of railroad property.

[ ] **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than ($) per claim and ($) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ ] **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ ] **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

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[ ] **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ B.3.4 Performance Bond and Payment Bond
The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the State of Nebraska, subject to the requirements of AIA A201 Article 11, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	100% of the Guaranteed Maximum Price
Performance Bond	100% of the Guaranteed Maximum Price

The form of Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

The terms of Article 11 of AIA A201 are supplementary to the terms contained in this Exhibit B. If there is any conflict between the terms of this Exhibit B and Article 11 of AIA A201, the terms of this Exhibit B shall control.

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

OWNER *(Signature)*	CONSTRUCTION MANAGER *(Signature)*
Bill Koile, President Board of Education	Brent Suing, Project Executive
(Printed name and title)	(Printed name and title)

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Additions and Deletions Report for
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PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 15th day of April in the year 2024

...

DC West Community Schools – Multi-Sport Activities Complex Project

...

Douglas County School District 28-0015, a/k/a DC West Community Schools
A Nebraska political subdivision
401 S. Pine Street
Valley, NE 68064

...

Meyers-Carlisle-Leapley Construction Company, Inc., d/b/a MCL Construction
A Nebraska corporation
14558 Portal Circle
La Vista, NE 68138

...

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document ~~A201™ 2017,~~ A201, General Conditions of the Contract for Construction.

...

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this ~~Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~Article B.2.

PAGE 2

§ B.2.3.1 ~~Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the~~ The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located,~~ State of Nebraska, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in

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Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds.~~This insurance shall include the interests of mortgagees as loss payees.~~

...

Not applicable

...

Not applicable

...

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the ~~Owner~~ Contractor shall be responsible for all loss not covered because of such deductibles ~~or retentions.~~or retentions except the Owner shall be responsible for all losses not caused by the willful or negligent acts or omissions of Construction Manager or any employees, agents, representatives or subcontractors of Construction Manager.

PAGE 3

The Owner ~~shall~~ may purchase and maintain the insurance selected and described below.

...

The Owner ~~shall~~ may purchase and maintain the insurance selected below.

PAGE 4

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) at least five business days after execution of the Contract and prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured ~~on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.~~all of Construction Manager's insurance policies, except Construction Manager's workers compensation insurance and professional liability insurance, if any. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies and any endorsements will not be canceled, reduced, or restricted for any reason, other than nonpayment of premium, until at least 30 calendar days' prior written notice of such cancellation, reduction, or restriction has been given to the Owner and Construction Manager. If any of the insurance coverages are required to remain in force after final payment, an additional certificate of insurance, policy, and endorsement evidencing continuation of such insurance coverage, including coverage for completed operations, shall be submitted with the final Certificate for Payment, as required by AIA A201 General Conditions as amended for this Project, and thereafter upon renewal or replacement of such coverage. Information concerning reduction or restriction of coverage on account of revised limits or claims paid under the General Aggregate, or cancellation or expiration of the insurance, shall be furnished by written notice to the Owner from the Construction Manager within three business days of the date Construction Manager knew or should have known of the cancellation, reduction, or restriction. At least 30 calendar days prior to the date of expiration of any required insurance policy, Construction Manager shall provide Owner written notice of the impending expiration. In addition, Construction Manager shall also provide copies of all policies, declarations, and endorsements for such insurance to Owner as required by the AIA A201 General Conditions as amended for this Project. The Construction Manager shall retain all required certificates of insurance for the duration of the Project and for five years thereafter.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction

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Manager. If the insurance required by this Section B.3.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager and all Subcontractors shall cause the commercial general liability, automobile liability, excess liability, and any other insurance required by the Agreement, with the exception of Workers' Compensation insurance and professional liability insurance if any, to be endorsed coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.1.4 Occurrence Basis. All insurance policies shall be written on an occurrence basis.

§ B.3.1.5 Waiver of Subrogation. All insurance policies shall contain a blanket waiver of subrogation in favor of Owner, Architect and Architect's consultants 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.

§ B.3.1.6 Primary Non-Contributory. All insurance policies shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ B.3.1.7 All 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.

§ B.3.1.8 Subcontractor Insurance. The Construction Manager shall require all subcontractors to provide and maintain separate Commercial General Liability, Automobile Liability, Workers' Compensation, Employer's Liability, Professional Liability (if applicable), and Umbrella Excess Liability insurance coverages at the subcontractors' own expense. Such subcontractor insurance policies shall include and meet all of the requirements contained in this Article B.3.1.

PAGE 5

§ B.3.2.1 The Construction Manager and each of the Construction Manager'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 Construction Manager's operations under the Contract whether such operations be by Construction Manager 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, in the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located.~~ State of Nebraska. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General ~~Conditions, unless a different duration is stated below:~~
~~(If the Construction Manager is required to maintain insurance for a duration other than~~ Conditions. The insurance required by this Section shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Insurance coverages shall be written on an occurrence 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 Construction Manager's completed operations coverage, until the expiration of the period for correction ~~of Work, state the duration.)~~

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The limits of liability for such insurance shall be in at least the following amounts as specified below.

...

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§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence ~~form with~~ basis with annual unencumbered policy limits of not less than ~~($) each occurrence, ($) general aggregate, and ($) aggregate for products-completed operations hazard,~~ One Million Dollars ($ 1,000,000.00) each occurrence, and Two Million Dollars ($ 2,000,000.00) general aggregate, providing coverage for claims including

...

.2 personal injury and advertising ~~injury;~~injury, with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate;

.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such ~~property;~~property, in broad form and with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate;

.4 bodily injury or property damage arising out of ~~completed operations; and~~the Work and out of products and completed operations, with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate, said coverage to be maintained for three years after Final Completion (to be maintained for a period of three years after Final Payment; Construction Manager shall continue to provide evidence of such coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage) and must include Completed Operations coverage for Construction Manager, its subcontractors, and Owner;

.5 the Construction Manager's ~~indemnity obligations under Section 3.18 of the General Conditions.~~contractual liability, including but not limited to construction contracts and subcontracts and Construction Manager's indemnity obligations under the General Conditions with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate;

.6 damages resulting from premises operations, with policy sub-limits of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate; and

.7 General Aggregate per Project endorsement.

§ B.3.2.2.2 The ~~Construction Manager's~~ Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

PAGE 6

.4 Claims for indemnity under ~~Section 3.18 of~~ the General Conditions arising out of injury to employees of the insured.

...

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.2.3 Commercial General Liability miscellaneous provisions:

.1 Deductible for the insurance policy shall not exceed $10,000 per occurrence;

.2 Additional insured endorsement shall cover vicarious liability, including completed operations;

.3 Policy shall have removed fellow employee exclusion;

.4 Policy may contain a modified notice of occurrence for supervisors and up; and

.5 Policy may exclude coverage for asbestos, nuclear energy, engineer's and architect's errors and omissions.

§ B.3.2.3 Automobile Liability ~~covering vehicles owned, and non-owned~~ written on an occurrence basis covering vehicles owned, hired and non-owned, or any other vehicles used, by the Construction Manager, with a combined single policy limits of not less than ~~($) per accident,~~ One Million Dollars ($ 1,000,000.00) per occurrence, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability ~~insurance, provided such~~

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~~primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in~~ insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

...

§ B.3.2.5.1 A copy of a current certificate of insurance showing statutory workers' compensation insurance coverage for the Construction Manager's employees providing services on a Project is required for the duration of the Project. The Construction Manager must provide a certificate of insurance to the Owner upon execution of the Contract. If the coverage period shown on the Construction Manager's current certificate of insurance ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of insurance with the Owner showing that coverage has been extended.

§ B.3.2.5.1.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by the Owner.

§ B.3.2.5.1.2 Persons providing services on the Project include all persons or entities performing all or part of the services the Construction Manager 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, direct or leased employees of any such entity, or direct or leased employees of any entity that furnishes persons to provide services on the Project.

§ B.3.2.5.1.3 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.

§ B.3.2.5.1.4 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

.1 A separate and current certificate of insurance, 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 days after receipt by the Construction Manager, a new certificate of insurance showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ B.3.2.5.1.5 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ B.3.2.5.1.6 The Construction Manager shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ B.3.2.5.1.7 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

.1 Provide coverage for all of its employees providing services on the Project for the duration of the Project;

.2 Provide to the Construction Manager, 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 Construction Manager, 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 Construction Manager:

.1 A certificate of coverage, prior to the other person beginning work on the Project; and

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.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 ten 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.

§ B.3.2.5.1.8 By signing the Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ B.3.2.5.1.9 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000.00) each accident, One Million Dollars ($ 1,000,000.00) disease each employee, and One Million Dollars ($ 1,000,000.00) disease policy limit.

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§ B.3.2.8 If the Construction ~~Manager~~ Manager, or any Subcontractor, is required to furnish professional services as part of the Work, the Construction Manager or Subcontractor, whichever is actually performing the Work, shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~($) per claim and ($) in the aggregate.~~the following:

.1 Annual Unencumbered Limits of Liability (minimum)	Occurrence	Aggregate
Contract Sum < $500,000	$1,000,000	$1,000,000
$ 500,000 ≤ Contract Sum < $ 10,000,000	$2,000,000	$2,000,000
Contract Sum ≥ $ 10,000,000	$3,000,000	$3,000,000

.2 Aggregate per Project Endorsement

.3 Deductible for the insurance policy shall not exceed $10,000 per occurrence;

.4 The insurance shall remain in full force and effect for a period of three (3) years after the termination of the Agreement or the completion of the Construction Manager's services hereunder, whichever occurs later in time;

.5 The obligation to maintain Professional Liability insurance coverage shall survive termination of the Agreement;

.6 The policies shall provide a blanket waiver of subrogation in favor of Owner and Architect; and

.7 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Professional Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Professional Liability insurance limits.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate.

§ B.3.2.10 ~~Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($) per claim and ($) in the aggregate.~~[omit]

§ B.3.2.11 ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($) per claim and ($) in the aggregate.~~[omit]

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§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than One Million Dollar ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00) in the aggregate.

§ B.3.2.13 Umbrella Excess Liability with policy limits of not less than the following amounts:

.1 Annual Unencumbered Limits of Liability (minimum)	**Occurrence**	**Aggregate**
Contract Sum < $500,000	$1,000,000	$1,000,000
$ 500,000 ≤ Contract Sum < $ 10,000,000	$2,000,000	$2,000,000
$ 10,000,000 ≤ Contract Sum < $ 25,000,000	$5,000,000	$5,000,000
Contract Sum ≥ $ 25,000,000	$10,000,000	$10,000,000

.2 Aggregate per Project Endorsement; and

.3 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Umbrella Excess Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Umbrella Excess Liability insurance limits.

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§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located.~~ State of Nebraska. The Construction Manager'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. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

PAGE 10

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the ~~jurisdiction where the Project is located,~~ State of Nebraska, subject to the requirements of AIA A201 Article 11, as follows:

...

Payment Bond	100% of the Guaranteed Maximum Price
Performance Bond	100% of the Guaranteed Maximum Price

The form of Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

...

The terms of Article 11 of AIA A201 are supplementary to the terms contained in this Exhibit B. If there is any conflict between the terms of this Exhibit B and Article 11 of AIA A201, the terms of this Exhibit B shall control.

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

OWNER *(Signature)*	CONSTRUCTION MANAGER *(Signature)*
Bill Koile, President Board of Education (Printed name and title)	Brent Suing, Project Executive (Printed name and title)

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DC WEST COMMUNITY SCHOOLS
www.dcwest.org

Melissa Poloncic <mpoloncic@dcwest.org>

Resignation

1 message

Nathan Ter Beest <nterbeest@dcwest.org> Fri, Apr 12, 2024 at 8:57 AM
To: Melissa Poloncic <mpoloncic@dcwest.org>
Cc: Jim Tomanek <jtomanek@dcwest.org>, Jamie Jorgensen <jjorgensen@dcwest.org>, Bill Koile <bkoile@dcwest.org>, Liz Mayer <lmayer@dcwest.org>, Kelly Hinrichs <khinrichs@dcwest.org>, Luke Janke <ljanke@dcwest.org>

Dr. Poloncic and the DC West School Board:

The last six years have been some of the best in my career. I want to announce I am resigning my position at the conclusion of my 2023-2024 contract. I truly appreciate the opportunity I have had to serve the communities of Valley and Waterloo as the Activities Director in the high school. I will continue to watch the growth of this amazing organization. Thank you for allowing me to serve the kids of DC West.

Dear Mr. Knott and Dc West School Board,

I am writing to resign from my teaching position at Douglas County West High School effective at the end of the 2023-2024 school year. Thank you for the opportunities that you have given me to grow as a teacher. I have decided to pursue new opportunities in my teacher career.

I want to thank you for the support, guidance, and opportunities that you have given me while teaching at Douglas County West. Thank you again for the experience and support. I believe that Douglas County West will continue to thrive and achieve great success in the future.

Sincerely,

Nick Sims

DC WEST COMMUNITY SCHOOLS
www.dcwest.org

Melissa Poloncic <mpoloncic@dcwest.org>

Fwd: plan

Nicki Pechous <npechous@dcwest.org> Fri, Apr 12, 2024 at 4:33 PM
To: Melissa Poloncic <mpoloncic@dcwest.org>

Nicki Pechous
Director of Special Education
DC West Community Schools
npechous@dcwest.org
531-459-2645

---------- Forwarded message ---------
From: **Pam Dobrovolny** <pdobrovolny@dcwest.org>
Date: Mon, Mar 25, 2024 at 8:17 AM
Subject: plan
To: Nicki Pechous <npechous@dcwest.org>

Hello --
I would like to thank you for the opportunity to be a part of the DC West special education team this past school year. I have enjoyed my time here and am impressed with the dedication of all of the staff! I regret to inform you, at this time I do not plan to return to my position for the 2024-25 school year as I accepted a position with ESU #3.

Again, thank you for all of your support!

Pam Dobrovolny

--
Pam Dobrovolny, Ed.S., CCC-SLP
Speech/Language Pathologist
DC West Community Schools
401 S Pine St PO Box 378
Valley, NE 68064
Main Office: (402) 359-2151
My Extension: (531) 459-2585

DC West Community Schools
2023-2024 CALENDAR

August

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Aug. 8-9	New Teacher Professional Development/ Workdays
Aug. 10, 11, 14, 15	Teacher Work Days/ Professional Development
Aug. 14	Open House
Aug. 16	1st Day of Classes: Dismiss @ 11:45 a.m.
	Afternoon: Teacher Professional Development
Sept. 4	NO SCHOOL - Labor Day
Sept. 29	NO SCHOOL - Teacher Professional Development
Oct. 17	EL Parent/Teacher Conferences 3:45-7:45 p.m.
Oct. 18	MS/HS Parent/Teacher Conferences 3:45-7:45 p.m.
Oct. 19	EL/MS/HS Student Classes 8:00- 11:45 a.m.
Oct. 19	End 1st Quarter (45)
Oct. 19	NO SCHOOL - EL/MS/HS Parent/Teacher Conferences 12:30-8:00
Oct. 20	NO SCHOOL- Conference Comp Day
Oct. 23	NO SCHOOL - EL/MS/HS Teacher Workday
Nov. 22-24	NO SCHOOL - Thanksgiving Break
Dec. 19	End 1st Semester (38, 83 days)
Dec. 20	NO SCHOOL- Teacher Professional Development
Dec. 20-Jan. 3	NO SCHOOL - Winter Break
Jan. 3	NO SCHOOL - Teacher Workday
Jan. 4	First Day of Second Semester
Jan. 15	NO SCHOOL- MLK Day
Feb. 19	NO SCHOOL- Teacher Professional Development
Mar. 7	End 3rd Quarter (44)
Mar. 8	NO SCHOOL - Teacher Workday
Mar. 12	EL Parent/Teacher Conferences 3:45-7:45 p.m.
Mar. 13	MS/HS Parent/Teacher Conferences 3:45-7:45 p.m.
Mar. 14	EL/MS/HS Student Classes 8:00- 11:45 a.m.
Mar. 14	NO SCHOOL - EL/MS/HS Parent/Teacher Conferences 12:30-8:00
Mar. 15	NO SCHOOL- Conference Comp Day
Mar. 18-22	NO SCHOOL - Spring Break
Apr. 19	NO SCHOOL- Teacher Professional Development
May 12	Graduation Sunday
May 23 or earlier	End 2nd Semester (44, 88 days)
May 21, 22, 23	Built in Snow Days
	**Last Day for students: Dismiss @ 11:45 a.m.
May 24 or earlier	NO SCHOOL -Teacher Workday

January

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

March

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

April

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

School in Session (171 Days)

Board Approved 3.13.23

- NO SCHOOL - New Staff Professional Development/ Workdays
- NO SCHOOL - Teacher Workday
- NO SCHOOL - Teacher Professional Development
- NO SCHOOL for Staff & Students
- Indicates Friday Early Dismissal
- Parent Teacher Conferences (EL, MS, HS)

CALENDAR INCLUDES 3 SNOW DAYS