

Board of Education Regular Meeting

Monday, October 11, 2021 7:00 PM

Room 810, Elm Creek High School  
230 Calkins Avenue  
Elm Creek, NE 68836-0490

1. Call to Order
2. Flag Salute
3. Open Meeting Act
  - 3.1. The "Open Meetings Act" has been duly posted at the front of the room. It has also been advertised in the Beacon-Observer Newspaper ahead of time.
4. Roll Call
  - 4.1. - Excuse Absent Board Members
5. Approval of Agenda
6. Citizens Comments
7. Consent Agenda
  - 7.1. Elm Creek Public Schools Mission Statement:  
At Elm Creek Public Schools we will:  
Be Kind  
Be Respectful  
Be Responsible  
Be Trustworthy  
Be Accountable  
Be Honest  
and Give Great Effort.
  - 7.2. Minutes
  - 7.3. Claims
  - 7.4. Treasurer's Report
8. Information Items
  - 8.1. Resolution to approve the sale of bonds for the purpose of constructing the proposed elementary building.

**A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY BUFFALO COUNTY SCHOOL DISTRICT 0009 (ELM CREEK PUBLIC SCHOOLS) IN THE STATE OF NEBRASKA OF ITS GENERAL OBLIGATION SCHOOL BUILDING BONDS, SERIES 2021, IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ELEVEN MILLION NINE HUNDRED EIGHTY THOUSAND DOLLARS (\$11,980,000); CANVASSING THE RETURNS OF THE SPECIAL ELECTION HELD IN CONNECTION WITH SUCH BONDS; AUTHORIZING CERTAIN OFFICIALS TO DETERMINE THE FINAL AGGREGATE PRINCIPAL AMOUNT, MATURITIES, RATES, TERMS AND OTHER DETAILS OF SUCH BONDS; IMPOSING AN AD VALOREM**

**TAX ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND THE INTEREST ON SUCH BONDS; AUTHORIZING THE DESIGNATION OF CERTAIN BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; AUTHORIZING THE SALE AND DELIVERY OF THE BONDS TO THE PURCHASER THEREOF; ADOPTING CERTAIN POST-ISSUANCE TAX COMPLIANCE AND DISCLOSURE POLICIES AND PROCEDURES WITH RESPECT TO THE BONDS; AUTHORIZING THE TAKING OF CERTAIN ACTIONS AND THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

- 8.2. Removal of the current "shop" (50' x 75' metal building) in order to allow site preparations to begin in the spring of 2022. This would require the surplus and sale of the building.
- 8.3. A Geo-Technical evaluation must be done to prepare further plans for building the elementary school. Elm Creek Schools has been provided with three bids.
- 8.4. District 83 Land Ownership
9. Action Items
  - 9.1. Approve the resolution for selling bonds 'as presented' in its entirety.
  - 9.2. Surplus and approve the sale of existing shop (50' x 75' metal building) by use of public auction.
  - 9.3. Authorize GSI to perform the Geo-Technical analysis.
  - 9.4. Appoint NASB Delegate Assembly representative.
  - 9.5. Sell one acre of land formerly known as District 83 for \$500 plus attorney fees of \$160.
10. Reports
  - 10.1. Superintendent's Report
    - 10.1.1. Construction Update

Meeting on October 13th for **Schematic Design Review/Mechanical, Electrical, and Plumbing**
  - 10.2. Board Committees
    - 10.2.1. **September 29th @ 5:00 - Building, Grounds, and Transportation Committee**
    - 10.2.2. **September 29th @ 6:30 - Finance**
    - 10.2.3. **October 6th @ 5:00 - Curriculum and Technology**
    - 10.2.4. **October 6th @ 6:30 - Policy and Negotiations**
11. Next Regular Board Meeting
12. Adjournment

## Board of Education Regular Meeting

Monday, September 13, 2021 6:20 PM

### 1. Call to Order

Call to Order at 6:20 PM by JC Ourada

### 2. Flag Salute

### 3. Open Meeting Act

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

### 4. Roll Call

Roll Call JC Ourada

All Present

#### 4.1. -Excuse Absent Board Members

None

### 5. Approval of Agenda

Approve the agenda as presented. This motion, made by Morgan Fouts and seconded by Jeff Meads, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

### 6. Citizens Comments

None

### 7. Consent Agenda

Approve Consent Agenda. This motion, made by JC Ourada and seconded by Dana Steiner, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

#### 7.1. Elm Creek Public Schools Mission Statement:

At Elm Creek Public Schools we will:

Be Kind

Be Respectful

Be Responsible

Be Trustworthy

Be Accountable

Be Honest

and Give Great Effort.

## 7.2. Minutes

## 7.3. Claims

## 7.4. Staff Adjustments

7.4.1. Mary Florell - substitute for Elm Creek Public Schools

7.4.2. Leah Kenney - substitute for Elm Creek Public Schools

## 7.5. Treasurer's Report

## 7.6. Participation in Insurance Program by Board Members

## 8. Information Items

8.1. Proposal to purchase shop equipment such as welding booths, fume extractors, helmets, gloves, and construction equipment.

Presentation by Maranda Kegley

Current Shop Conditions

Jackets have lots of holes and missing buttons.

Gloves have many holes and don't provide good protection.

Helmets and shields are scratched and in poor condition.

Ventilation is poor with lots of fumes.

Ms. Kegley presented what needed to be purchased and the quantities necessary.

## 8.2. Instructional Update

-Curriculum Maps

-PBIS

-Identification of Needs/MTSS

-Prescribed Instruction

Presented by Mrs. Williams and Mr. Spotanski. Special Thank you to Jessica Edeal for assisting with this report

## 9. Action Items

### 9.1. Approve 2021-2022 Elm Creek Public Schools Budget

Motion to approve the 2021-2022 Elm Creek Public Schools district budget as presented. This motion, made by JC Ourada and seconded by Dana Steiner, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

### 9.2. Approve the 2021-2022 Elm Creek Public Schools Tax Request

Motion to approve the 2021-2022 Elm Creek Public Schools tax request as presented. This motion, made by Jeff Meads and seconded by Alicia Beavers, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

9.3. Recognize the Elm Creek Education Association as exclusive bargaining agent for non-supervisory certificated staff for the 2022-2023 contract year.

Motion to accept the Elm Creek Education Association as the official bargaining agent for non-supervisory certified staff for the 2022-2023 school year. This motion, made by JC Ourada and seconded by Morgan Fouts, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

9.4. Approve 2021-2022 superintendent evaluation tool provided by NASB

Motion to use the standard tool used last year for the Superintendents Evaluation provided by NASB. JC will check the price to ensure it is the same or less than last year. This motion, made by JC Ourada and seconded by Dana Steiner, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

9.5. Give the superintendent authority to spend up to, but no more than, \$39,000 on shop equipment such as welding booths, fume extractors, gloves, helmets, and equipment for construction classes.

Motion to authorize Dr. Schroder to spend up to, but no more than, \$39,000 for shop equipment such as welding booths, fume extractors, gloves, helmets, and equipment for construction classes. This motion, made by Alicia Beavers and seconded by JC Ourada, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

10. Reports

10.1. Superintendent's Report

10.1.1. -Radio Interview with KGFW on bond election

-Science Adoption has begun

11. Next Regular Board Meeting

October 11 at 7:00 PM

12. Adjournment

Adjourned at 7:24 PM

motion to adjourn the meeting at 7:11 PM. This motion, made by JC Ourada and seconded by Jeff Meads, Passed.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

## Tax Request Hearing

Monday, September 13, 2021 6:15 PM

### 1. Call to Order

Call to Order by JC Ourada at 6:18 PM

### 2. Open Meetings Act

### 3. Roll Call

Roll Call by President JC Ourada.

All Present.

### 4. Receive Public Comment Concerning the Proposed 2021-2022 District Property Tax Request

### 5. Adjournment

Move to Adjourn at 6:19 PM

Motion to Adjourn 6:19 PM Passed with a motion by JC Ourada and a second by Dana Steiner.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada:

Yea, Dana Steiner: Yea

## Budget Hearing

Monday, September 13, 2021 6:00 PM

### 1. Call to Order

Meeting Called to Order by JC Ourada @ 6 P.M.

### 2. Open Meetings Act

### 3. Roll Call

Roll Call by JC Ourada All present

### 4. Information Item

#### 4.1. Presentation of Budget and Tax Request

### 5. Public Comment

#### 5.1. Receive Public Comment Concerning the Proposed 2021-2022 District Budget

Public Comment 9/13/2021 On the proposed 2021-2022 Budget.

Marvion Reichert of Elm Creek spoke.

Address: 7680 Highway 30, *Elm Creek, NE*, 68836-7644

### 6. Adjournment

Motion to adjourn at 6:18 PM Passed with a motion by JC Ourada and a second by Morgan Fouts.

Alicia Beavers: Yea, Morgan Fouts: Yea, Jeff Meads: Yea, Lynette Mitchell: Yea, JC Ourada: Yea, Dana Steiner: Yea

**Invoice Listing - Summary**

Unposted; Batch Description October 2021 Invoices

<u>Vendor ID</u>	<u>Vendor Name</u>	<u>Invoice Number</u>	<u>Description</u>	<u>Invoice Date</u>	<u>Check Date</u>	<u>Checking Account ID</u>	<u>Check Number</u>	<u>CC:</u>	<u>Invoice Amount</u>
Batch Description: October 2021 Invoices			Processing Month: 10/2021	Credit Card Vendor ID:	End of Fiscal Year Expense Invoices:				
4IMPRINT	4IMPRINT, INC	9317482	Teacher Gifts	09/27/2021					282.01
AGDRYER	AG DRYER SERVICES	41016	SECURITY GATE	09/20/2021					346.19
AGLAND	AGLAND AUTO REPAIR	6780	2020 VAN OIL CHANGE	09/03/2021					71.25
ALPHAREH	ALPHA REHABILITATION P.C.	3300	PT, OT, SPEECH SERVICES	09/30/2021					2,749.87
ACP	ARLINGTON COMPUTER PRODUCTS	0536610-IN	HALO IOT SMART SENSOR	04/21/2021					1,950.00
BAMFORD	BAMFORD, INC	20684	FIRE SPRINKLER SYSTEM INSPECTION	09/23/2021					500.00
BLACKHILLS	BLACK HILLS ENERGY	09232021-01	GAS SERVICE	09/23/2021					76.05
BLACKHILLS	BLACK HILLS ENERGY	09232021-40	GAS SERVICE	09/23/2021					149.44
BLACKHILLS	BLACK HILLS ENERGY	09232021-94	GAS SERVICE	09/23/2021					32.70
BUFFALOELE	BUFFALO CO ELECTION COMMISSION	09142021	Election Costs	09/14/2021					4,855.82
CARROT	CARROT-TOP INDUSTRIES	51269100	Flags	09/28/2021					79.49
CENTURY	CENTURYLINK	09072021	PHONE SERVICE	10/01/2021					385.86
USBANK90	CORPORATE PAYMENT SYSTEMS	10062021	PURCHASES	10/06/2021					2,866.16
DAWSONELE	DAWSON COUNTY ELECTION OFFICE	09162021	ELECTION FEES	09/16/2021					45.22
EAKESOFF	EAKES OFFICE PRODUCTS	8311429-0	CLEANING SUPPLIES	09/03/2021					125.00
EAKESOFF	EAKES OFFICE PRODUCTS	8324212-0	STAPLES	09/03/2021					356.00
EAKESOFF	EAKES OFFICE PRODUCTS	8324668-0	CLEANING SUPPLIES, TRASH BAGS	09/03/2021					1,197.46
EAKESOFF	EAKES OFFICE PRODUCTS	8324968-0	TOWELS	09/03/2021					164.90
EAKESOFF	EAKES OFFICE PRODUCTS	8324968-1	SPRAY BOTTLES	09/10/2021					86.80
EAKESOFF	EAKES OFFICE PRODUCTS	8328252-0	TOWELS, TISSUE	09/10/2021					310.99
EAKESOFF	EAKES OFFICE PRODUCTS	8333432-1	SOAP ETC	09/24/2021					200.88
EAKESOFF	EAKES OFFICE PRODUCTS	C8324668-0	CREDIT FOR TOWELS ETC	09/17/2021					(160.52)
EAKESOFF	EAKES OFFICE PRODUCTS	INV304012	BRUSH ROLLER	09/10/2021					108.78
ECOLAB	ECOLAB PEST ELIMINATION	5294847	PEST ELIM	09/14/2021					71.01
ECOWATER	ECOWATER SYSTEMS	SA02184	SOFT SALT	09/03/2021					203.00
EDEALJ	EDEAL, JESSICA	10012021	45 MILES AT .575	10/01/2021					25.88
ESU10	EDUCATIONAL SERVICE UNIT 10	10012021	ESU SERVICES	10/01/2021					5,891.21
FLINNS	FLINN SCIENTIFIC INC	2617386	SCIENCE SUPPLIES	09/13/2021					37.45
FOSTFA205	FOSTER'S FAMILY FOODS	09012021-54	FOOD	09/01/2021					120.36
FOSTERC	FOSTER, CURT	10012021	RENT	10/01/2021					100.00
GRACZYKL	GRACZYK LAWN & LANDSCAPE	SEPTEMBER INVOICES	LAWN SERVICES	09/30/2021					2,811.50
HARRIS1079	HARRIS SCHOOL SOLUTIONS	DATMN0000692	AAWEB EXTENSION	09/01/2021					400.00
HELLRI648	HELLRIEGEL, RYAN	0816211	DOT EXAM	08/16/2021					100.00
HOMETOWN	HOMETOWN LEASING	10012021	COPIERS	10/07/2021					1,420.00
ISS	INTEGRATED SECURITY SOLUTIONS	20211862	FIRE EXTINGUISHER	08/25/2021					1,524.00
ISLANDSU	ISLAND SUPPLY WELDING	20211008	SHOP	09/30/2021					67.20

<u>Vendor ID</u>	<u>Vendor Name</u>	<u>Invoice Number</u>	<u>Description</u>	<u>Invoice Date</u>	<u>Check Date</u>	<u>Checking Account ID</u>	<u>Check Number</u>	<u>CC:</u>	<u>Invoice Amount</u>
JOSTEN334	JOSTENS	752913	HERITAGE MEDALS	08/31/2021					44.07
PEPPERJW	JW PEPPER	AUGUST INVOICES	CHOIR MUSIC	08/31/2021					227.64
KELLYSA	KELLY'S SALES & AG SERVICE	23342	2012 VAN	09/02/2021					75.00
KELLYSA	KELLY'S SALES & AG SERVICE	23343	'06 INSPECTION , OIL CHANGE	09/02/2021					118.95
KSBSCHOOL	KSB SCHOOL LAW	10668	LEGAL SERVICES	10/03/2021					1,994.00
LAKESHOR	LAKESHORE LEARNING MATERIALS	543132090821	LACEY BOUC	09/08/2021					80.49
LINWELD	MATHESON TRI GAS	0051859564	SHOP	09/30/2021					189.20
MCGRAW	MCGRAW-HILL COMPANIES	118925213001	REVEAL MATH	09/10/2021					43.50
MCGRAW	MCGRAW-HILL COMPANIES	119211282001	SPIELVOGEL2013	09/03/2021					525.81
MEADL	MEAD LUMBER CO	6640267-I	SHED SUPPLIES	08/26/2021					2,414.66
MENARD430	MENARDS - KEARNEY	24434	SHED SUPPLIES	09/07/2021					466.51
MENARD430	MENARDS - KEARNEY	25266	CUSTODIAL SUPPLIES	09/28/2021					47.98
MENARD430	MENARDS - KEARNEY	25408	STUDS	10/01/2021					55.84
NASB	NEBRASKA ASSN OF SCHOOL BOARDS	INV-08652-X5L5F8	MEMBERSHIP MEETING	08/31/2021					75.00
NASB	NEBRASKA ASSN OF SCHOOL BOARDS	INV-08658-H0G9Z3	FACILITIES & CONSTRUCTION MEETING	08/31/2021					190.00
NPPD	NEBRASKA PUBLIC POWER DISTRICT	09162021-6740	BUS BARN ELECTRICITY	09/16/2021					47.37
NPPD	NEBRASKA PUBLIC POWER DISTRICT	09162021-6744	BALLFIELD ELECTRICITY	09/16/2021					135.78
NPPD	NEBRASKA PUBLIC POWER DISTRICT	09162021-6748	230 E CALKINS ELECTRICITY	09/16/2021					7,275.23
NERURALR	NEBRASKA RURAL RADIO ASSN	CC-LX-1210055568	KRVN-FM	08/31/2021					120.00
NESSAFETY	NEBRASKA SAFETY CENTER	57-9297	LEVEL 2 TRANSP COURSE	09/01/2021					200.00
OVERHEADD	OVERHEAD DOOR OF KEARNEY	23809	SHOP DOOR	09/01/2021					240.26
PAYFLE1360	PAYFLEX SYSTEMS USA	131932-1617688	RENEWAL FEE ( 2 ENROLLEES)	09/10/2021					650.00
PEARSON	PEARSON	15981142	SCORING SUBSCRIPTION	09/15/2021					120.00
PEARSON	PEARSON	16008506	RECORD FORMS	09/16/2021					954.45
PEARSON	PEARSON	16087979	SCORE REPORTS	09/21/2021					2.30
PHELPSCLER	PHELPS COUNTY CLERK	09162021	SPECIAL ELECTION	09/16/2021					204.06
PIONEER	PIONEER DRAMA SERVICE	10012021	LONG DISTANCE	10/01/2021					100.67
ROGUEFIT	ROGUE FITNESS	9457402	WEIGHT ROOM SUPPLIES	09/16/2021					621.83
SAHLING	SAHLING KENWORTH-KEARNEY	041S226887	2013 BUS	09/29/2021					358.98
SAHLING	SAHLING KENWORTH-KEARNEY	052S33++33	2020 BUS	09/29/2021					71.55
SOFTWAREUN	SOFTWARE UNLIMITED, INC.	20210531-369	SCHOOL ACCT SYSTEM	09/01/2021					10,440.00
STATENE	STATE OF NEBRASKA	1288071	NETWORK SERVICE FEES	10/08/2021					204.95
STELLING	STELLING BRASS & WINDS	JULY INVOICES	SUMMER BAND REPAIRS/SERVICE	09/22/2021					3,475.25
TEACHINGS	TEACHING STRATEGIES	INV132927	GOLD ONLINE ASSESSMENTS	09/27/2021					537.75
VEXROBOTIC	VEX ROBOTICS, INC	PO 11311	GO CLASSROOM ADD -ON, GO KIT	09/02/2021					2,997.00
VILLAGEE	VILLAGE OF ELM CREEK	09302021	WATER, SEWER, GARBAGE	09/30/2021					857.70
VILLAGEU	VILLAGE UNIFORM	SEPTEMBER INV	RAGS, MOPS, TOWELS	09/30/2021					147.55

School District #9  
10/09/2021 1:44 PM

**Invoice Listing - Summary**

Unposted; Batch Description October 2021 Invoices

User ID: LKJ

<u>Vendor ID</u>	<u>Vendor Name</u>	<u>Invoice Number</u>	<u>Description</u>	<u>Invoice Date</u>	<u>Check Date</u>	<u>Checking Account ID</u>	<u>Check Number</u>	<u>CC:</u>	<u>Invoice Amount</u>
WALMAR1554	WAL-MART	09192021	OFFICE SUPPLIES	09/19/2021					16.00
WELLSF1562	WELLS FARGO	09262021	CC CHARGES	09/26/2021					422.55
WEXBANK	WEX BANK	74749693	FUEL	09/30/2021					2,244.92
WITTL	WITT, LARRY	08182021	SAFETY REVIEW	08/18/2021					475.00
WOODWARDS	WOODWARDS DISPOSAL SERVICE	NO9020-870	SHRED SERVICES	09/27/2021					25.00
YANDAS796	YANDA'S MUSIC	2488-10012021	CABLE ACCESSORIES AND REPAIRS	10/01/2021					244.68

Batch Total: 69,291.44

Report Total: 69,291.44

## CASH SUMMARY REPORT

DATE RANGE: 09/01/2021 TO 9/30/2021

ARRANGED BY: FUND DESCRIPTION

Fund Description	Beginning (09/01/2021)	Revenue To Date	Expenses to Date	9/30/2021
Activity Fund	43,143.04	90,260.58	(74,637.34)	58,766.28
Bond Fund	457,715.09	146,653.61	-	604,368.70
Building Fund	145,154.62	25,596.53	-	170,751.15
DEPRECIATION FUND	519,581.88	27.88	-	519,609.76
Employee Benefit Fund	11,383.88	12.92	-	11,396.80
GENERAL FUND	164,123.37	1,136,613.78	(393,834.85)	906,902.30
LUNCH FUND*	14,445.29	488.21	(23,177.03)	(8,243.53)
SAM/DUNS ACCOUNT	10,193.40	-	-	10,193.40
<b>TOTALS</b>	<b>1,365,740.57</b>	<b>1,399,653.51</b>	<b>(491,649.22)</b>	<b>2,273,744.86</b>

\*LUNCH FUND

9/30/21 BALANCE	(8,243.53)
OUTSTANDING CLAIM DEP	38,187.25
OCTOBER AVAILABLE	29,943.72

ELM CREEK SCHOOL BOARD TREASURER'S REPORTS  
FOR OCTOBER 11, 2021  
SEPTEMBER 2021 FINANCIALS

**GENERAL FUND - ACCT NO. 137766**

BANK BALANCE SEPTEMBER 1, 2021		\$	164,123.37
RECEIPTS	BUFFALO COUNTY - TAXES		759,642.13
	Dawson County		36,822.70
	ESU #10		1,950.00
	KY HUB (REIMBURSEMENT)		161.80
	OVERTON SCHOOLS		25,878.47
	PHELPS COUNTY		207,495.68
	PRESCHOOL PAYMENTS		600.00
	STATE		38,007.00
	STATE AID		66,056.00
			1,136,613.78
	TOTAL RECEIPTS	\$	1,136,613.78
AVAILABLE BALANCE		\$	1,300,737.15
DISBURSEMENTS:			
	Bills Paid SEPTEMBER 13, 2021	\$	68,075.60
	Payroll	\$	325,759.25
			393,834.85
	TOTAL DISBURSEMENTS	\$	393,834.85
BOOK BALANCE SEPTEMBER 30, 2021		\$	906,902.30

**DEPRECIATION FUND - ACCT NO 14832**

Balance SEPTEMBER 1, 2021		\$	519,581.88
Xfer from General		\$	-
INTEREST		\$	27.88
			519,609.76
BOOK BALANCE SEPTEMBER 30, 2021		\$	519,609.76

**UNEMPLOYMENT CD #2232**

Balance SEPTEMBER 1, 2021		\$	11,383.88
INTEREST		\$	12.92
BALANCE SEPTEMBER 30, 2021		\$	11,396.80

ELM CREEK SCHOOL BOARD TREASURER'S REPORTS  
 FOR OCTOBER 11, 2021  
 SEPTEMBER 2021 FINANCIALS

**BUILDING FUND**

Balance SEPTEMBER 1, 2021	\$	145,154.62
BUFFALO COUNTY	\$	19,277.55
DAWSON COUNTY	\$	950.08
RECEIPTS - PHELPS COUNTY	\$	5,349.48
INTEREST	\$	19.42
BALANCE SEPTEMBER 30, 2021	\$	170,751.15

**BOND FUND (OPENED 11-12-09)**

(Reconciled)

Balance SEPTEMBER 1, 2021	\$	457,715.09
BOND INTEREST PAYMENT	\$	-
RECEIPTS- BUFFALO	\$	110,533.21
RECEIPTS-DAWSON CO	\$	5,447.57
RECEIPTS - PHELPS COUNTY	\$	30,672.83
BALANCE SEPTEMBER 30, 2021	\$	604,368.70

**SAM/DUNS ACCOUNT (REAP-1173)**

Balance SEPTEMBER 1, 2021	\$	10,193.40
DISBURSEMENTS	\$	-
BALANCE SEPTEMBER 30, 2021	\$	10,193.40

ELM CREEK SCHOOL BOARD TREASURER'S REPORTS  
 FOR OCTOBER 11, 2021  
 SEPTEMBER 2021 FINANCIALS

**LUNCH FUND**

BANK BALANCE SEPTEMBER 1, 2021 \$ 14,445.29

RECEIPTS

LUNCH SALES	\$	295.87
EFUND PAYMENTS	\$	-
Federal Reimbursement Breakfast	\$	-
Federal Reimbursement Lunch	\$	-
State Reimbursement Lunch	\$	192.34
State Reimbursement Breakfast	\$	-
SFP RECEIPTS (ADMIN)	\$	-
SFP RECEIPTS (OPERATING)	\$	-
TRANSFERS FROM GENERAL ACCT	\$	-
OUTSTANDING LUNCH REIMBURSEMENTS	\$	38,187.25
<b>TOTAL RECEIPTS</b>	<b>\$</b>	<b>38,675.46</b>

AVAILABLE BALANCE \$ 53,120.75

DISBURSEMENTS

Food/Groceries/Milk Etc.	\$	12,752.99
Supplies	\$	367.66
Miscellaneous (Reimbursements, Bank Fees)	\$	-
Payroll	\$	10,056.38

TOTAL DISBURSEMENTS 23,177.03

BALANCE 29,943.72

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OCT 2021 Bills

CASHWA	\$	4,251.89
FOSTERS	\$	444.52
HILAND (MILK)	\$	1,657.81
OCTOBER PAYROLL (ESTIMATE)	\$	8,500.00
US FOODS	\$	2,667.06
VILLAGE UNIFORM (TOWELS ETC)	\$	-
	<b>\$</b>	<b>17,521.28</b>

ELM CREEK SCHOOL BOARD TREASURER'S REPORTS  
 FOR OCTOBER 11, 2021  
 SEPTEMBER 2021 FINANCIALS

**ACTIVITY FUND (CURRENT CASH BALANCE SUMMARY)**

	Balance SEPTEMBER 1, 2021	\$	43,143.04
GROUP A & B	RECT'S-GATE, DIST ACT, ENTRY FEES, RETURN CHNGE	\$	16,651.00
GROUP C, D & E	RECT'S-FUNDRAISING	\$	-
GROUP F	RECT'S - SALES	\$	18,126.44
GROUP G & H	RECT'S-FEES	\$	55,483.14
GROUP A & B	EXPENSE-START CHNGE, OFFICIALS, ENT FEES	\$	(11,461.66)
GROUP C, D & E	EXPENSE-FEES AND APPAREL	\$	(8,836.44)
GROUP F	EXPENSE-BILLINGS(SALES)	\$	(2,235.91)
GROUP G & H	EXPENSE-FEES	\$	<u>(52,103.33)</u>
	 BALANCE SEPTEMBER 30, 2021	 \$	 58,766.28

GROUP KEY  
 A-ATHLETICS  
 B-ACTIVITIES  
 C-CLUBS AND ORGANIZATIONS  
 D-SPECIAL FUNDS  
 E-CLASS FUNDS  
 F-SCHOOL GROUPS  
 G-DISTRICT ACTIVITIES  
 H-MISCELLANEOUS

**EXTRACT FROM MINUTES OF MEETING  
OF THE BOARD OF EDUCATION  
OF BUFFALO COUNTY SCHOOL DISTRICT 0009  
(GENERAL OBLIGATION BONDS)**

A meeting of the Board of Education of Buffalo County School District 0009 (Elm Creek Public Schools), was convened in open and public session at \_\_\_ p.m. on \_\_\_\_\_, 2021, at \_\_\_\_\_, in \_\_\_\_\_, Nebraska, the usual meeting place of said Board. Present were:

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\_\_\_\_\_. Absent were: \_\_\_\_\_.

Notice of the meeting was given in advance thereof by publishing or posting, an affidavit of publication or certificate of posting being attached to these minutes, which notice advised of the availability of the agenda for the meeting. Notice of the meeting was given in advance to all Members of the Board of Education and a copy of their acknowledgment of receipt of notice and the agenda is attached to these minutes. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

At the beginning of the meeting, the President publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was being held.

The President stated it was necessary for the Board to consider the issuance of bonds. After discussion, Board Member \_\_\_\_\_ introduced and moved the adoption of the following resolution:

## RESOLUTION

BE IT RESOLVED BY THE BOARD OF EDUCATION OF BUFFALO COUNTY SCHOOL DISTRICT 0009, IN THE STATE OF NEBRASKA, as follows:

Section 1. The Board of Education (the “Board”) of Buffalo County School District 0009, in the State of Nebraska (the “Issuer”), hereby finds and determines as follows:

(a) The Issuer is duly organized and presently exists as a Class III School District under Chapter 79, Reissue Revised Statutes of Nebraska, 2014, as amended;

(b) Pursuant to a resolution previously adopted by said President and Board, an election was called and held on September 14, 2021, on the proposition for the issuance of bonds of the Issuer in the stated principal amount not to exceed \$11,980,000, in order to pay the costs of constructing additions to the existing school building and providing for necessary furniture and apparatus for such school building and additions (collectively, the “Project”); that notice of said election was given as provided by law; that, according to the Election Commissioner’s Report upon the results of the canvass of such election, the proposition for such issuance of bonds received the approval of 375 votes cast for said proposition at said election, and was opposed by 259 votes cast against said proposition; and that a proposition for the issuance of bonds for such purpose was not submitted to the electors of the Issuer within six months preceding the date of such election;

(c) It is necessary and advisable for the Issuer to issue and sell its general obligation bonds, in one or more series, in the stated principal amount of up to \$11,980,000 to provide funds to pay the costs of the Project;

(d) All conditions, acts and things required by law to exist or to be done precedent to the issuance of the Issuer’s General Obligation Bonds, in one or more series, in the stated principal amount of up to \$11,980,000 pursuant to Section 10-701 to 10-716.01, R.R.S. Neb. 2012, as amended, do exist and have been done as required by law.

Section 2. There shall be and are hereby ordered issued the negotiable bonds of the Issuer to be designated as “General Obligation Bonds” in the stated principal amount of not to exceed ELEVEN MILLION NINE HUNDRED EIGHTY THOUSAND DOLLARS (\$11,980,000) (the “Bonds”), with said Bonds to be issued in such year or years in one or more series, to mature in such amounts and to become due on such dates and in such years and bear interest at the rates per annum as shall be determined in a written designation that may be included as a part of a Bond Purchase Agreement or other confirmation of the initial purchaser’s agreement to purchase the Bonds, including final rates, maturities and pricing for the Bonds and the aggregate purchase price therefor (such acceptance, purchase agreement and/or other confirmation is sometimes hereinafter referred to as the “Designation”) signed by either the President or the Vice President of the Board or the Superintendent of Schools (each, an “Authorized Officer”) on behalf of the Board. First National Capital Markets, Inc., as the Issuer’s financial advisor (the “Financial Advisor”), is hereby authorized to (i) proceed with the public sale of the Bonds on such date as may be determined by an Authorized Officer in consultation with the Issuer’s Financial Advisor, or (ii)

assist the Issuer with the engagement of an underwriter relating to the sale of the Bonds. The Bonds shall be issued within the following parameters:

- (a) the true interest cost on the Bonds shall not exceed 4.50% per annum;
- (b) the aggregate principal amount of the Bonds shall not exceed \$11,980,000;
- (c) the Bonds may be issued on the basis of original issue discount and/or original issue premium; provided that the aggregate amount of original issue premium and original issue discount (if any) results in an aggregate net original issue discount (if any) not in excess of two percent (2.00%) of the stated principal amount of the Bonds;
- (d) the longest maturity of the Bonds may not be later than December 31, 2042;
- (e) Two or more principal maturities of the Bonds may be combined and issued as “term bonds” and the Authorized Officer may determine mandatory sinking fund payments and mandatory redemption amounts; any Bonds issued as “term bonds” shall be redeemed at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the date of redemption and may be selected for redemption by any random method of selection determined appropriate by the Registrar (as hereinafter designated) or by the Depository (as hereinafter designated).

The Authorized Officers are hereby authorized to make such determinations on behalf of the Board and to evidence the same by execution and delivery of the Designation and such determinations, when made by the Authorized Officers, shall constitute the action of the Board without further action of the Board.

The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be the date of delivery thereof or such other date of original issue, if any, as may be set forth in the Designation. Interest on the Bonds, at the respective rates for each maturity, shall be payable on June 15, 2022, and semiannually thereafter on June 15 and December 15 of each year (or such other date or dates as may be determined in the Designation, each an “Interest Payment Date”) and the Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date to which interest is paid or provided for, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the fifteenth day immediately preceding the Interest Payment Date (or such other date as may be established in the Designation, the “Record Date”), subject to the provisions of Section 4 hereof. The Bonds shall be numbered from R-1 upwards in the order of their issuance. No Bonds shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds shall be made by the Paying Agent and Registrar, as designated pursuant to Section 3 hereof, by mailing check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the

Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 3 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to said Paying Agent and Registrar. The Issuer and said Paying Agent and Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the Issuer nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this resolution shall be valid and effectual and shall be a discharge of the Issuer and said Paying Agent and Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

Section 3. Unless as otherwise provided in the Designation, BOKF, National Association, of Lincoln, Nebraska, is hereby designated to serve as Paying Agent and Registrar for the Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar Agreement" between the Issuer and said Paying Agent and Registrar as approved by an Authorized Officer. The Paying Agent and Registrar shall keep and maintain for the Issuer books for the registration and transfer of the Bonds at its principal corporate trust office (for purposes of this Resolution and the Bonds, "principal corporate trust office" shall mean the designated corporate trust office of the Paying Agent and Registrar in Lincoln, Nebraska, or any successor designated corporate trust office established by said Paying Agent and Registrar). The names and registered addresses of the registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the principal corporate trust office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the Issuer will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new Bond or Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this resolution, one Bond may be transferred for several such Bonds of the same interest rate and maturity and for a like aggregate principal amount, and several such Bonds may be transferred for one or several such Bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be cancelled and destroyed. All Bonds issued upon transfer of the Bonds so surrendered shall be valid obligations of the Issuer evidencing the same obligations as the Bonds surrendered and shall be entitled to all the benefits and protection of this resolution to the same extent as the Bonds upon transfer of which they were delivered. The Issuer and said Paying Agent and Registrar shall not be required to transfer any Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of thirty (30) days next preceding the date fixed for redemption.

Section 4. In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the

Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 5. The Bonds shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof (or such other early redemption date as may be provided for in the Designation, subject to any limitations of applicable law), at the principal amount thereof plus accrued interest to the date fixed for redemption (or such other early redemption provisions as may be provided for in the Designation, subject to limitations of applicable law). Any Bonds maturing as term bonds (as may be determined in the Designation) shall be redeemed for the years and principal amounts as determined in the Designation. Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond to be redeemed shall be given by the Paying Agent and Registrar by mail not less than thirty (30) days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond to be redeemed at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by number and maturity, the date of issue and the date fixed for redemption and state that such Bond or Bonds are to be presented for prepayment at the office of the Paying Agent and Registrar. Notice of redemption of term bonds called for mandatory redemption shall be given without further direction by the Issuer. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of any proceedings of the Board designating the Bonds called for redemption or the effectiveness of any such call for the Bonds for which notice by mail has been properly given and the Board shall have the right to direct further notice of redemption for any such Bond for which defective notice has been given. In the event term maturities and mandatory redemption amounts are determined in the Designation, the provisions of this Section 5 shall apply generally to mandatory redemptions. Any such mandatory redemptions shall be at the principal amount redeemed plus accrued interest to the date set for redemption.

Section 6. If the date for payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 7. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF BUFFALO

GENERAL OBLIGATION BOND, SERIES \_\_\_\_\_  
OF BUFFALO COUNTY SCHOOL DISTRICT 0009  
(ELM CREEK PUBLIC SCHOOLS)

No. \_\_\_\_\_ \$ \_\_\_\_\_  
Interest Rate                      Maturity Date                      Date of Original Issue                      CUSIP No.  
\_\_\_\_\_ %                      \_\_\_\_\_, 20\_\_\_\_                      \_\_\_\_\_, \_\_\_\_\_

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That Buffalo County School District 0009 (Elm Creek Public Schools), in the State of Nebraska (the "Issuer"), hereby acknowledges itself to owe and for value received promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue shown above or most recent Interest Payment Date to which interest has been paid or provided for, whichever is later, at the rate per annum specified above, payable \_\_\_\_\_, 20\_\_\_\_, and semiannually thereafter on \_\_\_\_\_ and \_\_\_\_\_ of each year (each, an "Interest Payment Date"). Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of this bond is payable upon presentation and surrender of this bond at the designated corporate trust office of \_\_\_\_\_, the Paying Agent and Registrar, in \_\_\_\_\_. Interest on this bond will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's address as shown on such books and records (the "Record Date"). Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the applicable Record Date and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available. For the prompt payment of this bond, principal and interest, as the same become due, the full faith, credit and resources of said Issuer are hereby irrevocably pledged.

This bond is one of an issue of fully registered bonds of the total principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), of even date and like tenor herewith, except as to date of maturity, rate of interest and denomination, which were issued by said Issuer for the purpose of paying the costs of constructing additions to the existing school building and providing for necessary furniture and apparatus for such school building and additions,

all in pursuance of Sections 10-701 to 10-716.01, R.R.S. Neb. 2012, as amended. All of said bonds are issued pursuant to a resolution duly adopted by the Board of Education of said Issuer (the "Resolution"). Said bonds are issued pursuant to the approving vote of the voters of the Issuer at an election held on September 14, 2021, for which notice was given as required by law.

The Bonds shall be subject to redemption in whole or in part on any date on or after the fifth anniversary of the date of original issue hereof, at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the date of redemption.

[The bonds of this issue maturing as term bonds on \_\_\_\_\_, 20\_\_ (the "Term Bonds") shall be redeemed, in part, prior to their stated maturity, on \_\_\_\_\_, 20\_\_ and on \_\_\_\_\_ of each year thereafter until final stated maturity thereof with such mandatory redemptions and payment at maturity to be for the dates and in the amounts set forth below:

<u>Date of Redemption</u>	<u>Amount Required to be Redeemed</u>
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Such mandatory redemptions for such bonds due as term bonds shall be at a price equal to \_\_\_% of the principal amount redeemed, plus accrued interest to the date fixed for redemption. The Paying Agent and Registrar shall select such bonds for optional or mandatory redemption using any random method of selection determined appropriate by Paying Agent and Registrar.]

Notice of any redemption shall be given by mail, sent to the registered owner of any bond called for redemption at said registered owner's address in the manner provided in the resolution authorizing said bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the designated corporate trust office of the Paying Agent and Registrar in Lincoln, Nebraska, upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Resolution authorizing said issue of bonds, subject to the limitations therein prescribed. The Issuer, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is

not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

AS PROVIDED IN THE RESOLUTION REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE RESOLUTION, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE RESOLUTION TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT AND REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS NOTE MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE RESOLUTION.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREOF IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSONS IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law and that the indebtedness of this Issuer, including this bond, does not exceed any limitation imposed by law. The Issuer agrees that it shall cause to be levied and collected annually a special levy of taxes on all the taxable property in said Issuer for the purpose of paying and sufficient to pay the interest and principal of this bond as and when such interest and principal become due.

This bond shall not be valid and binding on the Issuer until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Board of Education of the Issuer has caused this bond to be executed on behalf of the Issuer with the facsimile signatures of the President and the Secretary of said Board, all as of the date of original issue shown above.

BUFFALO COUNTY SCHOOL DISTRICT 0009,  
IN THE STATE OF NEBRASKA

By: \_\_\_\_\_ (Sample—Do Not Sign)  
President

ATTEST:

\_\_\_\_\_  
(Sample—Do Not Sign)  
Secretary

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by resolution of the Board of Education of Buffalo County School District 0009, in the State of Nebraska, as described in the foregoing bond.

BOKF, NATIONAL ASSOCIATION  
Lincoln, Nebraska  
Paying Agent and Registrar

By: \_\_\_\_\_ (Sample—Do Not Sign)  
Authorized Signature

(FORM OF ASSIGNMENT)

For value received \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ (Social Security or Taxpayer Identification Number \_\_\_\_\_) the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the same on the books of registration in the office of the within mentioned Paying Agent and Registrar with full power of substitution in the premises.

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

\_\_\_\_\_

Registered Owner(s)

Signature Guaranteed

By: \_\_\_\_\_

\_\_\_\_\_  
Authorized Officer

NOTE: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 8. Each of the Bonds shall be executed on behalf of the Issuer with the manual or facsimile signatures of the President and Secretary of the Board. The Bonds shall be issued initially as “book-entry-only” bonds using the services of The Depository Trust Company (the “Depository”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a Letter of Representations (the “Letter of Representations”) in the form required by the Depository (which may be in the form of a blanket letter, including any such blanket letter previously executed and delivered), for and on behalf of the Issuer, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The Issuer and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a “Beneficial Owner”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds.

The Paying Agent and Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the Issuer, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available

Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the Issuer determines that it is desirable that certificates representing the Bonds be delivered to the ultimate Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this resolution to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee; or

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar Agreement.

(f) In the event of any partial redemption of a Bond, unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this resolution relating to partial redemption of Bonds, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced, the Issuer shall immediately provide a supply of printed bond certificates for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement Bonds upon transfer or partial redemption, the Issuer agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting President and Secretary of such Board. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid

and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond.

The Bonds shall not be valid and binding on the Issuer until authenticated by the Paying Agent and Registrar. The Issuer shall maintain a record of information with respect to such bonds as required under Section 10-140, R.R.S. Neb. 2012, as amended, and shall cause the same to be filed in the office of the Auditor of Public Accounts of the State of Nebraska. Thereafter the Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, the Paying Agent and Registrar is authorized to deliver them to the initial purchaser thereof for an aggregate purchase price to be determined in the Designation. Said initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Resolution. Such purchaser and its agents, representatives and counsel (including bond counsel and the Issuer's Financial Advisor) are hereby authorized to take such actions on behalf of the Issuer as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing. On behalf of the Issuer, each of the Authorized Officers is hereby authorized to (i) proceed with the public sale of the Bonds on such date as may be determined by an Authorized Officer in consultation with the Issuer's Financial Advisor, or (ii) engage an underwriter for the sale of the Bonds in consultation with the Issuer's Financial Advisor.

Section 9. The Secretary of the Board of the Issuer is directed to make and certify a transcript of the proceedings of the Issuer precedent to the issuance of said Bonds which shall be delivered to the purchaser of said Bonds. The President or Secretary of the Board shall certify the taxable valuation, the number of children of school age residing in the Issuer and the total bonded indebtedness of the Issuer.

Section 10. The Board shall cause to be levied and collected annually a special levy of taxes on all the taxable property in the Issuer for the purpose of paying and sufficient to pay the interest and principal of the Bonds as and when such interest and principal become due according to the terms thereof. The County Treasurer of Buffalo County is hereby directed to make payment of taxes collected for the payment of the Bonds, in amounts sufficient and at the appropriate times for the payment of principal and interest on the Bonds, to the Paying Agent and Registrar upon written directions from the Treasurer of the Issuer, as delivered and in effect from time to time.

Section 11. The Issuer hereby covenants to the purchaser and registered owners of the Bonds hereby authorized that it will make no use of the proceeds of said bond issue, including tax levy monies intended to be used to pay principal and interest on said Bonds, which would cause said Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said bond issue. The Issuer hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status of interest payable on the Bonds. The Issuer represents and warrants that the Bonds are not "private activity bonds" as such term is defined in Section 141(a) of the Code and agrees to take all further actions, if any, necessary on its part to qualify the Bonds herein authorized as "tax-exempt obligations." Unless otherwise provided in the Designation, the Issuer hereby designates

the Bonds as its “qualified tax-exempt obligations” pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue tax-exempt bonds or other tax-exempt interest bearing obligations aggregating in principal amount more than \$10,000,000 during the calendar year that the Bonds are issued (taking into consideration the exception for current refunding issues).

Section 12. The net principal proceeds of the Bonds shall be applied upon order of the President of the Board or other duly authorized officer(s) to pay a portion of the costs of constructing the portion of the Project intended to be financed thereby, including the costs of issuing the Bonds. Such proceeds may be held by the Issuer’s Treasurer or by a trustee or custodian appointed for such purposes. The Issuer will provide all other funds necessary for the acquisition, construction and completion of such projects, and the President and Secretary are further authorized to take any and all actions necessary or appropriate in connection therewith.

Section 13. The preparation, use and distribution of a Notice of Sale, a Preliminary Official Statement or other offering materials, in such form and content as the Authorized Officers shall, in consultation with the Issuer's Financial Advisor, determine to be necessary or appropriate in order to effectuate the issuance and sale of the Bonds. Each Authorized Officer is hereby authorized to deem any such offering materials to be final for purposes of the Rule 15c2-12. Upon consultation with the Issuer's Financial Advisor, any of the Authorized Officers are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance and sale of the Bonds as contemplated by this Resolution, including the execution of a bid award in the event of a public sale or the execution of a Bond Purchase Agreement in the event of a negotiated sale with an underwriter. Each of the Authorized Officers is hereby authorized to make award of the Bonds to the bidder determined to have made that bid at public sale or to the underwriter at a negotiated sale that is determined by such officer to be in the best interests of the Issuer.

Section 14. The Issuer hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the Bonds, a continuing disclosure undertaking in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission (the “Rule”) in such form as determined necessary and appropriate by such Authorized Officer (the “Continuing Disclosure Undertaking”) and (b) covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this Resolution, failure of the Issuer to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any beneficial owner or any registered owner of a Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer to comply with its obligations under this Section, and under the Continuing Disclosure Undertaking. Each of the Authorized Officers is authorized to appoint a Dissemination Agent for the Bonds.

Section 15. In order to promote compliance with certain federal tax and securities laws relating to the bonds herein authorized, the policy and procedures attached hereto as Exhibit “A” (the “Post-Issuance Compliance Policy and Procedures”) is hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance

Compliance Policy and Procedures and any similar policy or procedures previously adopted and approved, the attached Post-Issuance Compliance Policy and Procedures shall control.

Section 16. The officers of the Issuer, or any one or more of them, are hereby authorized to execute and deliver any and all certificates and documents and to take any and all actions determined appropriate in connection with the issuance and sale of the Bonds.

Section 17. This resolution shall take effect and be in force from and after its passage as provided by law.

ADOPTED this \_\_\_\_ day of October, 2021.

BUFFALO COUNTY SCHOOL DISTRICT  
0009, IN THE STATE OF NEBRASKA

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

## Exhibit A

### Policy and Procedures Federal Tax Law and Disclosure Requirements for Tax-exempt Bonds and/or Tax Advantaged Bonds

**ISSUER NAME:** Buffalo County School District 0009, in the State of Nebraska

**COMPLIANCE OFFICER (BY TITLE):** Superintendent of Schools

#### POLICY

It is the policy of the Issuer identified above (the “Issuer”) to comply with all Federal tax requirements and securities law continuing disclosure obligations for its obligations issued as tax-exempt bonds (or as tax credit, direct pay subsidy or other tax-advantaged bonds, as applicable) to ensure, as applicable (a) that interest on its tax-exempt bonds remains exempt from Federal income tax, (b) that the direct payments or tax credits associated with its bonds issued as tax advantaged bonds are received in a timely manner and (c) compliance with any continuing disclosure obligations of the Issuer with respect to its outstanding bonds.

#### PROCEDURES

Compliance Officer. Review of compliance with Federal tax requirements and securities law continuing disclosure obligations as generally outlined below shall be conducted by the Compliance Officer identified above (the “Compliance Officer”). To the extent more than one person has been delegated specific responsibilities, the Compliance Officer shall be responsible for ensuring coordination of all compliance review efforts.

Training. The Compliance Officer shall evaluate and review educational resources regarding post-issuance compliance with Federal tax and securities laws, including periodic review of resources published for issuers of tax-exempt obligations by the Internal Revenue Service (either on its website at <http://www.irs.gov/taxexemptbond>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website [“EMMA”] at <http://www.emma.msrb.org>, or elsewhere).

Compliance Review. A compliance review shall be conducted at least annually by or at the direction of the Compliance Officer. The review shall occur at the time the Issuer’s annual audit takes place, unless the Compliance Officer otherwise specifically determines a different time period or frequency of review would be more appropriate.

Scope of Review.

*Document Review.* At the compliance review, the following documents (the “Bond Documents”) shall be reviewed for general compliance with covenants and agreements and applicable regulations with respect to each outstanding bond issue:

- (a) the resolution(s) and/or ordinance(s), as applicable, adopted by the governing body of the Issuer authorizing the issuance of its outstanding bonds, together with any documents setting the final rates and terms of such bonds (the “Authorizing Proceedings”),
- (b) the tax documentation associated with each bond issue, which may include some or all of the following (the “Tax Documents”):
  - (i) covenants, certifications and expectations regarding Federal tax requirements which are described in the Authorizing Proceedings;
  - (ii) Form 8038 series filed with the Internal Revenue Service;
  - (iii) tax certificates, tax compliance agreements, tax regulatory agreement or similar documents;

- (iv) covenants, agreements, instructions or memoranda with respect to rebate or private use;
  - (v) any reports from rebate analysts received as a result of prior compliance review or evaluation efforts;  
and
  - (vi) any and all other agreements, certificates and documents contained in the transcript associated with the Authorizing Proceedings relating to federal tax matters.
- (c) the Issuer's continuing disclosure obligations, if any, contained in the Authorizing Proceedings or in a separate agreement (the "Continuing Disclosure Obligations"), and
- (d) any communications or other materials received by the Issuer or its counsel, from bond counsel, the underwriter or placement agent or its counsel, the IRS, or any other material correspondence relating to the tax-exempt status of the Issuer's bonds or relating to the Issuer's Continuing Disclosure Obligations.

*Use and Timely Expenditure of Bond Proceeds.* Expenditure of bond proceeds shall be reviewed by the Compliance Officer to ensure (a) such proceeds are spent for the purpose stated in the Authorizing Proceedings and as described in the Tax Documents and (b) that the proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents, and (c) that any mandatory redemptions from excess bond proceeds are timely made if required under the Authorizing Proceedings and Tax Documents.

*Arbitrage Yield Restrictions and Rebate Matters.* The Tax Documents shall be reviewed by the Compliance Officer to ensure compliance with any applicable yield restriction requirements under Section 148(a) of the Internal Revenue Code (the "Code") and timely calculation and payment of any rebate and the filing of any associated returns pursuant to Section 148(f) of the Code. A qualified rebate analyst shall be engaged as appropriate or as may be required under the Tax Documents.

*Use of Bond Financed Property.* Expectations and covenants contained in the Bond Documents regarding private use shall be reviewed by the Compliance Officer to ensure compliance. Bond-financed properties shall be clearly identified (by mapping or other reasonable means). Prior to execution, the Compliance Officer (and bond counsel, if deemed appropriate by the Compliance Officer) shall review (a) all proposed leases, contracts related to operation or management of bond-financed property, sponsored research agreements, take-or-pay contracts or other agreements or arrangements or proposed uses which have the potential to give any entity any special legal entitlement to the bond-financed property, (b) all proposed agreements which would result in disposal of any bond-financed property, and (c) all proposed uses of bond-financed property which were not anticipated at the time the bonds were issued. Such actions could be prohibited by the Authorizing Proceedings, the Tax Documents or Federal tax law.

*Continuing Disclosure.* Compliance with the Continuing Disclosure Obligations with respect to each bond issue shall be evaluated (a) to ensure timely compliance with any annual disclosure requirement, and (b) to ensure that any material events have been properly disclosed as required by the Continuing Disclosure Obligation.

Record Keeping. If not otherwise specified in the Bond Documents, all records related to each bond issue shall be kept for the life of the indebtedness associated with such bond issue (including all tax-exempt refundings) plus six (6) years.

Incorporation of Tax Documents. The requirements, agreements and procedures set forth in the Tax Documents, now or hereafter in existence, are hereby incorporated into these procedures by this reference and are adopted as procedures of the Issuer with respect to the series of bonds to which such Tax Documents relate.

Consultation Regarding Questions or Concerns. Any questions or concerns which arise as a result of any review by the Compliance Officer shall be raised by the Compliance Officer with the Issuer's counsel or with bond counsel to determine whether non-compliance exists and what measures should be taken with respect to any non-compliance.

VCAP and Remedial Actions. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers under certain circumstances to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the

remedial actions available to issuers of certain bonds under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

**End of Exhibit A**

Board Member \_\_\_\_\_ seconded the motion and upon roll call upon the question of adoption of said resolution, the following Board Members voted AYE:

\_\_\_\_\_  
\_\_\_\_\_. The following voted NAY: \_\_\_\_\_. A majority of the Board Members having voted in favor of the adoption of said resolution, the President declared the resolution adopted.

DATED this \_\_\_ day of October, 2021.

\_\_\_\_\_  
President of the Board of Education

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\*\*\*\*

I the undersigned Secretary for Buffalo County School District 0009 (the “Issuer”) hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the President and Board of Education of said Issuer on \_\_\_\_\_, 2021; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily available for public inspection at the office of the Secretary; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting; and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

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Secretary

**ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF MEETING**

The undersigned members of the governing board (the "Board") of Buffalo County School District 0009, in the State of Nebraska (the "Issuer"), hereby acknowledge receipt of notice of a meeting of the Board and the agenda for such meeting held at \_\_\_\_ p.m., on \_\_\_\_\_, 2021, at \_\_\_\_\_ in \_\_\_\_\_, Nebraska.

DATED as of the \_\_\_\_ day of October, 2021.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that \_\_\_\_\_ was absent from the meeting but that, to my personal knowledge, such member(s) received advance notice of the meeting and agenda.

\_\_\_\_\_  
Board Secretary

**MID-STATE**  
**ENGINEERING &**  
**TESTING, INC.**

October 5, 2021

Dr. Bret Schroder  
Superintendent  
Elm Creek Public School  
230 East Calkins Avenue  
Elm Creek, NE 68836

**RE: Proposal of Work and Costs**  
**Geotechnical Investigation**  
**Proposed Additions and New Track**  
**Elm Creek Public Schools Addition**  
**Elm Creek, Nebraska**

Dear Mr. Schroder,

Mid-State Engineering is pleased to submit this proposal to provide a Geotechnical Investigation for the proposed addition to the existing Public School in Elm Creek, Nebraska. This proposal will outline our recommended work scope and the associated costs required to evaluate the above described.

**PROJECT DESCRIPTION**

Based on the information provided by Wilkins ADP, the proposed additions will include a 43,000 ft<sup>2</sup>, two-story addition to the west of the existing building. The first floor will cover approximately 31,000 ft<sup>2</sup> and the second floor covering 12,000 ft<sup>2</sup>. The proposed building will consist of steel post and beam with metal stud wall infill. Additions also include concrete drives, and new parking on the south side of the addition.

To accommodate the additions, the large three-story 1921 building and the existing shop building will be removed. It is anticipated several feet of fill will be required to bring the area of the 1921 building back to surrounding grades.

Additionally, maximum structural loads were provided and are estimated to be on the order of 180 kips for interior columns and 10 klf for walls.

**PROPOSED WORK SCOPE**

Our investigation will consist of drilling and sampling the subgrade soils, lab testing to determine the engineering property of the supporting soils and a report of findings and recommendations. The scope of our reports will include an evaluation of the engineering properties of the soils encountered, recommend soil support values and provide earth pressure information for foundation design, evaluate settlement and provide general recommendations for construction with respect to the soil's encountered. All information requested in the Wilkins RFP will be provided.

**MOBILIZATION**

A one-time mobilization cost of \$300.00 will be required to complete the geotechnical study. Based on the footage to be drilled we anticipate two days will be required to complete the site investigation. This includes providing the one-calls and located the borings in the field.

**DRILLING AND SAMPLING**

As requested, a total of six (6) soil borings will be provided across the proposed school additions as outlined in the boring maps provided by Wilkins. Boring's depths ranging between 10 and 50 feet are requested for site evaluation. Due to the loadings provided by Wilkins and the proposed additions, we recommend two (2) – 50' borings and three (3) – 30' borings be completed within the proposed building additions and one (1) – 10' borings be placed in the proposed south parking/drive addition. The two (2)-50' borings will provide adequate information if a deep foundation is required for foundation support.

Drilling and sampling at intervals of 5 feet or less will be performed with a Mobil drill rig using continuous flight augers. All drilling will be performed at a unit cost of \$18.00/lineal foot. Borings will be logged by a Professional Geotechnical Engineer or Engineering Technician. Based on a total drilling footage of 200 lineal feet, drilling costs will be \$3,600.00.

**LABORATORY TESTING**

Mid-State Engineering and Testing Inc. will conduct laboratory testing of the actual in-situ soils. Empirical data (CPT analysis) will not used in our evaluation of the site soils as this only adds cost to the owner during construction phases through conservative design. This testing allows Mid-State Engineering to properly evaluate the soils for the anticipated loading conditions and construction.

Based on recent previous experience in Elm Creek we anticipate the following tests will be required to evaluate the soils typical to this region. Testing will be performed at the following unit rates:

Moisture Contents (D2216-80).....	\$ 9.00 each
Density Determinations (D2216-80) .....	33.00 each
Unconfined Compression Tests (D2166-85) .....	38.50 each
Atterberg Limits (D4318-84).....	60.00 each
One-Dimensional Consolidation Test (D3435-80).....	180.00 each
Sieve Analysis (washed) (D422-72).....	90.00 each
#200 Washed Sieve Analysis (D1140-70).....	27.50 each

Based on the loading conditions and anticipated soils, we anticipate total lab testing will range between approximately \$400.00 and \$600.00.

**PROFESSIONAL SERVICES**

Engineering time will be provided at a rate of \$90.00/hour for a Project Engineer and \$120.00/hour for a Senior Level Geotechnical Engineer. This includes the costs of data reduction, report preparation, and consultation during design. We anticipate total engineering costs to complete the studies at the multiple locations will be \$1,560.00.

**ESTIMATED TOTAL COST**

Based on the indicated work scope, the total cost for this evaluation proposed additions are estimated at \$5,860.00 to \$6,060.00. The \$6,060.00 figure will not be exceeded unless additional work is authorized by the Owner. All work will be invoiced at the unit rates noted in this proposal for the actual work performed.

We anticipate being able to perform the drilling within approximately 5 days of authorization to proceed, with a formal report completed approximately 15 days after drilling. An executive summary will be available approximately one week after drilling has been completed to aid in design.

Mid-State Engineering & Testing Inc. is Qualified to conduct material testing for the U.S. Army Corps of Engineers for soils, aggregates and concrete tests and is Accredited through the AASHTO Accreditation Program in Concrete, and Aggregates. Inspections and proficiency tests are performed through CCRL and AMRL. Our field technicians are certified through NICET, ACI, and NDOR. Mid-State Engineering & Testing, Inc. carries a full range of general and professional liability insurance, which has been included for your review and would be in effect for this project. Any additional insurance requested would be invoiced only at the cost required to obtain the additional insurance.

If you have any questions or need further information, please contact us at 308-237-0187. If this proposal of work and cost is acceptable, please return a signed copy to our Kearney Office at your convenience.

Respectfully Submitted,  
Mid-State Engineering & Testing, Inc.



Scott A. Barnett, P.E.  
President/Sr. Geotechnical Engineer

Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

October 6, 2021

Dr. Bret Schroder, Superintendent  
Elm Creek Public Schools  
230 East Calkins Avenue  
Elm Creek, Nebraska 68836

**SUBJECT:** Proposal for Geotechnical Engineering Services  
Proposed Elm Creek Public School Addition  
230 East Calkins Avenue  
Elm Creek, Nebraska  
GSI No. P2053044

Dear Dr. Schroder:

GSI Engineering, LLC (GSI) is pleased to present this proposal to provide the geotechnical engineering services for the above-referenced project. This proposal is based upon a preliminary understanding of the project requirements as stated in an email provided by Mr. Jacob Sertich with Wilkins on September 29, 2021 and a follow up email on October 4, 2021.

GSI is committed to providing a high level of service to its clients. If a change in the proposed scope of work is requested, we are prepared to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions beyond that which is described in this proposal may result in additional risks assumed by you and may require adjustments to our fee.

#### **PROJECT DESCRIPTION**

The proposed project will be located at 230 East Calkins Avenue in Elm Creek, Nebraska. We understand the development will consist of an addition located on the west side of the existing school. We understand the building will consist of a two-story steel framed construction with a concrete slab-on-grade floor. We estimate the structures will have maximum column and continuous wall loads on the order of 180 kips and 10 kips per linear foot, respectively.

We assume site grading required to bring the building pad to the desired elevation will be minimal, with cuts or fills less than 2 feet. Please contact us if site grading will be more significant so we may evaluate and adjust our scope of service if necessary.

#### **SCOPE OF SERVICES**

GSI will request a utility clearance through Nebraska One-Call. The client will be responsible for locating and marking nonmember utilities or private utilities not located by Nebraska One-Call. GSI is not responsible for loss or damage resulting from unmarked utilities.

We propose to explore the subsurface conditions at this site by drilling 1 boring to a depth of approximately 30 feet and 4 borings to a depth of approximately 50 feet below grade within the building pad and 1 boring to a depth of approximately 8 feet in the additional paving area. The top of boreholes will be surveyed by the drill crew relative to a common on-site point.



We anticipate that the pavement will support predominately light passenger cars with less frequent panel delivery vans, passenger vans, and trash trucks.

Logs of the subsurface conditions encountered in the borings will be recorded by our field personnel at the time of subsurface exploration. Samples will be obtained at selected depth intervals and will be returned to our laboratory for testing and analysis.

We anticipate that the laboratory testing program may include the following tests:

- Moisture Content (ASTM D2216).....48
- Unconfined Compression (ASTM D2166)..... 10
- Atterberg Limits (ASTM D4318).....2

The actual type and number of tests will depend on the soil conditions we encounter.

Based on the findings of the field and laboratory programs and engineering analyses, we will provide opinions and recommendations regarding the following:

- Subsurface soil conditions, including depth and consistency of soil strata;
- Groundwater levels as observed during field work, excluding quantitative determinations of flow or dewatering rates;
- Site grading recommendations, including a discussion of anticipated excavation requirements;
- Suitable foundation type and depth, allowable bearing pressures, and estimated settlements;
- Treatment and/or removal of unsuitable bearing soils, if encountered;
- IBC seismic site class;
- Slab-on-grade construction;
- Excavation and trenching considerations;
- Suitability of on-site material for structural fill; and
- Pavement structural section for parking and drive areas.

We will present our opinions and recommendations in a written report which will include a map of the boring locations, logs of the explorations, and laboratory test results. We will submit an electronic copy (pdf format) of the final report.

**SCHEDULE**

We can begin the geotechnical exploration within approximately 3 to 5 working days after your authorization to proceed (weather permitting). We anticipate completion of the final report within two to three weeks from the completion of our field work. We will provide verbal updates as information is developed in order to expedite the project schedule.

**FEES AND CONDITIONS**

Our services will be performed in accordance with the attached General Conditions. The fee for the geotechnical engineering services described herein is a lump sum of \$5,000.00. The referenced price assumes that the site is accessible to a standard truck-mounted drilling rig. Additional or



deeper borings can be performed while our crew is on-site at a unit rate of \$22.00 per linear foot. This unit rate includes any additional laboratory testing and analyses associated with the additional borings.

If any significant changes are made in the location or proposed construction as described above, or if the encountered soil conditions are significantly different from those anticipated, additional study and analyses or more or deeper field exploration may be required. Any work required beyond the scope of that proposed above will be undertaken only after receiving your prior authorization and after an adjustment has been made to our fee to cover the additional work.

Please note that our fees are due within 30 days of the presentation of our invoice. If payment within 30 days is not possible, we should be contacted prior to commencing work to develop an acceptable payment schedule.

**LIMITATIONS**


The proposed exploration described herein specifically excludes the assessment of environmental characteristics, particularly those involving hazardous and/or toxic substances. A separate or concurrent environmental assessment may be appropriate prior to construction. We would be pleased to prepare a proposal for these services if requested. In the event that obviously suspicious subsurface materials are encountered visually or by odor in the field explorations, we will immediately terminate the explorations and notify you regarding the situation.


During the course of the performance of GSI's services, hazardous materials may be discovered. GSI will assume no responsibility or liability whatsoever for any claim, loss of property value, damage, or injury which results from pre-existing hazardous materials being encountered or present on the project site or from the discovery of such hazardous materials. You will be asked to sign an agreement indemnifying GSI from liability or loss arising out of the services covered by this proposal, including liability or loss in connection with pre-existing hazardous materials.

**CLOSURE**

GSI appreciates the opportunity to submit this proposal and we look forward to working with you on this project. If you are in agreement with the terms of this proposal, please sign and return the enclosed services agreement. A fully executed copy will be returned to you. If you have any questions or need additional information, please contact GSI's Grand Island office.

Respectfully submitted,  
GSI Engineering, LLC

  
James D. Sorgenfrei, P.E.  
Senior Geotechnical Engineer

  
Matthew N. Tye, P.E.  
Senior Geotechnical Engineer

JDS/MNT

Attachments: Geotechnical Services Agreement, General Conditions, and ASFE

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**GSI ENGINEERING, LLC**

**GSI No. P2153044**

Geotechnical Services Agreement

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**PARTIES**

This Agreement is made on October 6, 2021, between

Elm Creek Public Schools  
230 East Calkins Avenue  
Elm Creek, Nebraska 68836

And

GSI Engineering, LLC  
2960 North Diers Avenue  
Grand Island, Nebraska 68803

hereinafter called "Client"

hereinafter called "Consultant"

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**PROJECT DESCRIPTION**

Client engages Consultant to provide Geotechnical Engineering Services in connection with the Elm Creek Public Schools addition project in Elm Creek, Nebraska.

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**SCOPE OF SERVICES**

Consultant agrees to perform Geotechnical Engineering Services in accordance with attached proposal GSI No. P2153044, dated October 6, 2021. Client agrees that all services not expressly included are excluded from Consultant's Scope of Services.

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**COMPENSATION**

Client agrees to compensate Consultant for the referenced services a lump sum of \$5,000.00.

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**Client and Consultant acknowledge that each has read and agrees to the attached General Conditions, which are incorporated herein and made a part of this Agreement and apply to all services performed by Consultant.**

**Client: Elm Creek Public Schools**

**Consultant: GSI Engineering, LLC**

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

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

Print Name: \_\_\_\_\_

Print Name: James D. Sorgenfrei, P.E.

Title: \_\_\_\_\_

Title: Senior Geotechnical Engineer

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

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



## GENERAL CONDITIONS

### DEFINITIONS:

- A. **Contract Documents.** Plans, specifications, proposals, and Agreements between Client and GSI, including addenda, amendments, supplementary instructions, add-scopes and change orders.
- B. **Client.** The entity (individual person, corporation, non-profit organization, or other business entity) requesting GSI to perform the work as described in SCOPE of SERVICES under this Agreement.
- C. **Days.** Calendar day(s) unless otherwise stated.
- D. **Hazardous Materials.** Any toxic substance, chemical, radioactive material, pollutant or any material that is currently identified as hazardous under any federal, state or local law or regulation or is subject to special handling, disposal or clean-up. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollution.
- E. **Services.** The professional and technical services provided by GSI as set forth in the Agreements between Client and GSI and any written amendment to the Agreements.
- F. **Work.** The labor, materials, equipment, and services required to complete the work described in the Agreement between Client and GSI and any written amendment to the Agreement.

### SECTION 1: Independent Contractor

GSI Engineering, LLC (GSI) shall perform the Services and Work as an independent contractor. GSI shall have full control and discretion over and responsibility of supervising, managing, directing and controlling its employees, agents and subcontractors for all Work under this Agreement.

### SECTION 2: Scope of Services

GSI will perform Services and Work as described in the Contract Documents, which may be mutually amended by the Client and GSI in writing. Any mutual amendments to this Agreement in writing will become an amendment to this Agreement. GSI's Services under this Agreement include only those Services as specified in the Contract Documents. Client expressly waives any claim against GSI resulting from its failure to perform additional Services recommended by GSI, but not authorized by the Client, and any claim that GSI failed to perform Services that Client instructs GSI not to perform.

### SECTION 3: Client Responsibilities

In addition to payment for Services performed by GSI under this Agreement, Client agrees to: 1) furnish GSI with right-of-access to the site to conduct its Services; 2) assist and cooperate with GSI in any manner necessary and within its ability to facilitate GSI's performance under this Agreement; 3) supply GSI with all information and documents in Client's possession or knowledge that are relevant to the Services described in this Agreement; 4) execute all necessary manifests or other documents verifying ownership, possession or control over any Hazardous Materials; 5) provide the location of all known subsurface structures such as pipes, tanks, cables and private utilities; 6) as applicable, Client shall provide and deliver all samples for testing or provide instruction to GSI on their storage or shipment to Client; but, in either case, such samples remain the property of the Client. Client further agrees to meet its obligations under these general conditions.

### SECTION 4: Site Conditions

The Client is responsible for providing accurate information regarding all underground structures and utilities located at the site. In performing its Services and Work, GSI will take all reasonable precautions to avoid damage to underground structures or utilities. The Client also agrees to defend, indemnify and hold GSI harmless from any claims, payments or other liability, including costs and attorney fees, incurred by GSI for damages to underground structures or utilities which are not called to GSI's attention or correctly shown on the plans furnished to GSI.

To the extent enforceable, the Client must advise GSI of any known or suspected hazardous substances which may impact the Services that will be provided by GSI. If during the course of providing its Services, GSI observes or suspects the existence of unanticipated hazardous materials, GSI may at its option terminate any further Services or Work on the project and notify Client of this condition. Services or Work will be resumed only after a renegotiation of GSI's Services or Work and its fees. If such renegotiation does not lead to an amendment to this Agreement that is satisfactory to GSI, GSI may at its option terminate this contract. Client further agrees that GSI is not, and has no responsibility as, a handler, generator, operator, treater, storer, transporter or disposer of any known or unknown Hazardous Materials found at the Client's property and/or Site. Therefore, Client shall undertake or arrange for the handling, removal, treatment, storage, transportation and disposal of all hazardous substances found or identified at the site and/or Client's property.

### SECTION 5: Schedule and Change Orders

The schedule for GSI's Services or Work under this Agreement is set forth in GSI's proposal. If Client makes a request for additional Services or Work, alters the planned deliverables, suspends GSI's Services or Work for any period of time, or delays that occur due to causes not under GSI's control, the parties agree to equitably adjust the time for completion and the compensation for such Services or Work, including any necessary demobilization and subsequent remobilization, via a written change order. Unless otherwise agreed by the parties, such change orders must be in place in writing before any Services or Work can recommence.

### SECTION 6: Reports

GSI will furnish one electronic copy of any report to the Client. Additional electronic copies are available upon request. Hard copies will be furnished at the expense of the Client.

### SECTION 7: Payments to GSI

GSI will, to the best of its ability, perform the Services or Work and accomplish the objectives defined in this Agreement within any written cost estimate provided by GSI. Client recognizes that changes in scope and schedule and unforeseen circumstances can influence the successful completion of Services or Work within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services or Work will be completed for that amount; rather, it indicates that GSI will not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so as set forth in Section 5. GSI will submit invoices to the Client monthly and a final bill upon completion of its Services or Work based on the fee structure in the Contract Documents. Payment is due upon presentation of GSI's invoice and is past due 30 days from the invoice date. Client agrees to pay a finance charge of 1.5% per month, but not exceeding the maximum rate allowed by law, on past due accounts.

### SECTION 8: Ownership of Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by GSI are instruments of service. Therefore, they shall remain the property of GSI, unless there are other contractual arrangements made with Client.



## GENERAL CONDITIONS

### SECTION 9: Confidentiality

GSI shall hold in confidence all business or technical information obtained from the Client, or its affiliates, provided that they are identified in writing by the Client as "confidential" at the time they are given to GSI or generated in the performance of its Services or Work.

GSI shall not disclose such information without the Client's consent except to the extent required for: 1) Performance of Services or Work under this Agreement; 2) Compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) Compliance with any court order, other governmental directive, or other compulsory process such as a subpoena; and/or 4) Protection of GSI against claims or liabilities arising from performance of Services or Work under this Agreement. These obligations shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

### SECTION 10: Testing and Observation

Client acknowledges that testing and observation are discrete procedures, are not continuous or exhaustive, and are being conducted to reduce the Client's risks; however, they cannot eliminate them. Therefore, these procedures indicate the conditions only at the locations, depths and times they were performed. But, in performing any of its Services or Work, GSI will not be responsible for:

- the quality and completeness of the Client or Client's contractor's work, as the case may be,
- Client's or Client's contractor's work adhering to the project documents,
- defects discovered in the Client's or Client's contractor's work,
- supervising or directing the work performed by Client or Client's contractor, and
- Client's or Client's contractor's means and methods.

Likewise, Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by GSI and that the data, interpretations, and recommendations of GSI are based solely upon the data available to GSI. GSI will be responsible for its data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

### SECTION 11: Warranties

GSI warrants that the professional services performed under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in this geographic area. For its technical services under this Agreement, GSI warrants they will be performed in a workmanlike manner. **No other warranties, express or implied, are made or intended by the proposal for the Services, or Work, or by furnishing oral or written reports of the findings made.**

### SECTION 12: Limitation of Liability

GSI's total aggregate liability to Client and all third parties, including all construction contractors and subcontractors at the site, arising out of its performance, or breach of this Agreement, shall not exceed \$50,000 or GSI's total fee for the Services or Work performed under this Agreement, whichever is greater. Notwithstanding any other provision of this Agreement to the contrary, GSI shall have no liability to the Client for contingent, consequential or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility downtime; or other similar business interruption losses, however they may be caused. The limitations and exclusions of liability set forth in this Section shall apply regardless of the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of GSI, its employees, consultants, or subcontractors.

### SECTION 13: Insurance

GSI represents that it and its staff are protected by worker's compensation insurance. GSI has coverage under public liability and property insurance policies which GSI deems to be adequate. It is the policy of GSI to require certificates of insurance from all subconsultants or subcontractors employed by GSI. Certificates for all such policies of insurance will be provided to Client upon request in writing. Client also agrees to protect its employees by worker's compensation insurance, including waiving its rights against GSI for any claims for injuries to its employees.

### SECTION 14: Termination and Suspension

This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform according to the terms of this Agreement. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. Client may elect to suspend GSI's Services upon written notice. In the event of termination or suspension, GSI shall be paid for Services or Work performed to the effective date of termination or suspension plus reasonable termination or suspension expenses. These expenses shall include all direct costs of GSI required to complete analyses and records necessary to complete its files and may also include a report of the Services or Work performed to the effective date of termination or suspension.

### SECTION 15: Indemnity

Subject to the other terms of this Agreement, GSI agrees to indemnify and hold Client harmless from third party property damages and bodily injury to the extent they are proximately caused by GSI's negligence in performing its Services or Work.

Since GSI's compensation under this Agreement is not commensurate with the potential risk of injury or loss that may be caused by exposures to Hazardous Materials or other dangerous substances or conditions, the Client waives any claim against GSI and agrees, to the extent enforceable, to defend, indemnify and save GSI, its employees and subconsultants or subcontractors harmless from any claim, liability, defense costs, attorney fees or expert witness fees for injuries or losses sustained by any party from such exposures allegedly arising out of GSI's performance of its Services and Work.

### SECTION 16: Dispute Resolution Procedures

If a dispute arises out of this Agreement that does not involve termination or suspension, the parties will endeavor to settle it by direct discussions between their authorized representatives. If they are not able to resolve the dispute, the parties will endeavor to settle the dispute by mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association. If the dispute cannot be settled by mediation within 60 days of its request, either party may take whatever action allowed by law. Unless otherwise agreed in writing by the parties, GSI will continue to perform its Services or Work and Client will continue to make payment per the terms of this Agreement during these dispute proceedings.

### SECTION 17: Safety and Restoration

GSI is solely responsible for the health and safety of its employees, and disclaims any responsibility or authority over the safety of any third parties engaged in the performance of any work for the Client at the site. Therefore, GSI will provide its employees all personal protective clothing and equipment that is required to perform their services or work safely and according to all applicable local, state and federal laws and regulations.

While GSI will take all reasonable precautions to minimize any property damage at the site, Client understands that in the normal course of GSI performing its Services or Work, some property damage may occur. Therefore, Client waives any such claims against GSI.



## GENERAL CONDITIONS

### **SECTION 18: Miscellaneous Provisions**

Neither party may assign its interest in this Agreement without the written consent of the other party. This Agreement is for the exclusive benefit of Client and GSI and not for the benefit of any third party except to the extent specifically provided in this Agreement.

These general conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding GSI's Services or Work. This Agreement represents the entire agreement between the parties and supersedes all prior written or oral negotiations. If any provision of this Agreement is found to be unenforceable, that provision will be deemed stricken and reformed to comply with the law.

If it is necessary for GSI to retain counsel to enforce any provision of these general conditions, Client agrees to pay all attorney's fees and cost incurred by GSI. Client consents to the jurisdiction, law and venue of the location of the site where the Services or Work are performed or GSI's offices, if the Services or Work is exclusively performed there.

Neither the Client nor GSI will be liable to the other for any special, consequential, incidental or penal losses or damages including, but not limited to, losses, damages or claims related to the unavailability of properties or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

The parties' rights and remedies regarding this Agreement, whether in contract, tort or otherwise, shall be exclusively those expressly set forth in this Agreement. The waiver of any term or breach of this Agreement by either party will not operate as a subsequent waiver of the same term or breach.

**This Agreement reflects the entire Agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is found to be void or voidable, such portion will be deemed stricken and the Agreement reformed to approximate the stricken portions as closely as the law allows.**

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***END OF GENERAL CONDITIONS***

# Important Information about This Geotechnical Engineering Proposal

*Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.*

*While you cannot eliminate all such risks, you can manage them. The following information is provided to help.*

## **Participate in Development of the Subsurface Exploration Plan**

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

## **Expect the Unexpected**

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did

whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

## **Have Realistic Expectations; Apply Appropriate Preventives**

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation is an offer to better manage your risk.* Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not

have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

### **Realize That Geoenvironmental Issues Have Not Been Covered**

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

### **Obtain Professional Assistance To Deal with Mold**

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project **is not** a mold prevention consultant; **none of the services being offered have been designed or proposed for the purpose of mold prevention.**

### **Have the Geotechnical Engineer Work with Other Design Professionals and Constructors**

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by hav-

ing your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

### **Read Responsibility Provisions Closely**

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal's provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

### **Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance**

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with an ASFE member geotechnical engineer for more information. Confirm a firm's membership in ASFE by contacting ASFE directly or at its website.



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**LETTER AGREEMENT  
FOR PROFESSIONAL SERVICES**

10/6/2021

Elm Creek Public Schools Addition  
Attn: Dr. Bret Schroder  
230 East Calkins Avenue  
Elm Creek, Nebraska 68836

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
Elm Creek Public Schools Addition (the "Project")

Dear Dr. Schroder:

It is our understanding that Elm Creek Public Schools ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: Elm Creek Public Schools Addition. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

**SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: \_\_\_\_\_  
Anticipated Completion Date: \_\_\_\_\_

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

**COMPENSATION**

Client shall pay to Olsson for the performance of the Scope of Services a lump sum of Twelve Thousand Three Hundred Thirty Dollars and No 100's (\$12,330.00) or Ten Thousand Dollars and No 100's (\$10,000.00) according to the services requested. Olsson's reimbursable expenses for this project are included in the lump sum. Olsson shall submit invoices on a monthly-basis, and payment is due within 30 calendar days of invoice date.

**TERMS AND CONDITIONS OF SERVICE**

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be \_\_\_\_\_.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

**OLSSON, INC.**

By   
Andrew Phillips

By   
Thomas Kettler, Jr.

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**ELM CREEK PUBLIC SCHOOLS**

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

- Attachments
- General Provisions
- Scope of Services

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated October 6, 2021 between Elm Creek Public Schools ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

### **6.3 Certification of Merit**

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Opinion of Probable Cost**

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

#### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

#### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

#### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

#### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

#### **7.8 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

#### **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

## **7.12 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

## **7.13 Assignment**

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

## **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

## **7.15 Limitation on Damages**

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

## **7.16 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

## SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated October 6, 2021 between Elm Creek Public Schools (“Client”) and Olsson, Inc. (“Olsson”) providing for professional services. Olsson’s Scope of Services for the Agreement is indicated below.

### PROJECT DESCRIPTION AND LOCATION

Project will be located at: 230 East Calkins Avenue in Elm Creek, Nebraska.

Project Description: Elm Creek Public Schools Addition.

Project Background:

We understand that this project comprises the construction of a two-story addition to the west side of the existing building. We understand the project will generally comprise steel frame construction and will have maximum column and continuous wall loads on the order of 180 kips and 10 kips per lineal foot, respectively.

Based on a review of the soil borings Olsson performed for the previous addition to the school, we estimate that the subsoil profile will likely consist of fill materials underlain by native clays and sands. We have provided a fee for the boring depths requested in the RFP, as well as an alternate fee for shallower depths, which will provide sufficient delineation of the subsurface strata to prepare our recommendations.

### SCOPE OF SERVICES

Olsson will provide the following services (Scope of Services) to Client for the Project:

#### Phase 100 – Geotechnical Exploration

##### Task 101 – Drilling Services

##### 1. Coordination and General Notes

- a. Olsson will contact Diggers Hotline of Nebraska to locate underground utilities. To ensure the safety of the crew on site, Owner must inform Olsson of the location of all private utilities and private utility service connections. The cost of locating private utility lines and private service connections through private locating services and/or hydroexcavation is the Owner’s responsibility. Olsson is not responsible or liable for damage to any private utilities or private service connections. If requested, Olsson can coordinate private locating or hydroexcavation services for an additional fee.
- b. All boring locations must be readily accessible. Any fees resulting from the use of mud-matting or clearing operations to achieve access to boring locations is Owner’s responsibility and not included in this scope of work. Olsson will not perform field work until access to boring locations is satisfactory to Olsson.
- c. Drilling equipment may cause disturbance to natural surroundings including but not limited to soil indentations, concrete cracking, and damage to underground sprinkler systems. Olsson will not be liable or responsible for any site disturbance that may occur as a result of bringing equipment on site. The Owner accepts full responsibility for site disturbance.

## **2. Field Exploration**

- a. We propose to use a truck-mounted drill rig to complete the following soil test borings for the geotechnical exploration:
  - Four (4) soil test borings to a depth of 50 feet each;
  - One (1) soil test boring to a depth of 30 feet each;
  - One (1) soil test boring to a depth of 8 feet; and
  - One (1) bulk sample.

The soil borings will be advanced to the depths proposed, or to refusal, whichever is shallower. This proposal is based on a total drilling footage of 238 linear feet.
- b. Soils will be sampled in general accordance with ASTM D1586 and ASTM D1587.
- c. We will obtain groundwater levels in the test borings at the time of drilling and upon completion of the drilling operations.
- d. After obtaining groundwater level readings, we will backfill the borings with soil cuttings and patch pavements as necessary.

## **Task 102 – Geotechnical Services**

### **1. Laboratory Services**

As soil conditions dictate, laboratory testing may include visual soil classification (ASTM D2488), unconfined compression tests (ASTM D2166), thin-walled tube density tests (ASTM D7263), moisture content tests (ASTM D2216), Atterberg limit tests (ASTM D4318), P200 wash sieve tests (ASTM D1140), Standard Proctor tests (ASTM D698), and one-dimensional consolidation tests (ASTM D2435).

### **2. Engineering Analysis and Report Preparation**

Olsson will perform engineering analyses and provide conclusions and recommendations regarding the following:

- a. Maximum allowable soil bearing pressures and estimates of maximum total and differential settlement for design of shallow foundations. Shallow foundation recommendations will include minimum footing sizes and the required frost depth or other minimum bearing depth. Remedial measures, such as over-excavation, surcharge, or ground improvement, will also be addressed, if needed.
- b. Lift thickness, moisture control, and compaction criteria for backfill and structural fill. OSHA standards for soil excavation criteria will be included or referenced.
- c. Seismic soil site classification per ASCE 7 and IBC.
- d. Anticipated groundwater concerns, along with recommendations for addressing these concerns during construction, if required.
- e. Shrink/swell characteristics of the on-site soils and the potential for reuse of on-site soils as structural fill.
- f. Preparation of subgrade soils supporting concrete floor slabs, including an estimate of the modulus of subgrade reaction based on laboratory test results.
- g. Foundation and slab-on-grade drainage requirements.

- h. Lateral earth pressure values for restrained and/or unrestrained foundation/retaining walls, including passive pressures and sliding friction values to resist sliding.
- i. Pavement sections for light to heavy duty traffic.

We will present our conclusions and recommendations in a written report that will include a map of boring locations, soil boring logs, and a summary of laboratory tests.

## **FEE ESTIMATE AND CLOSURE**

**Task 101 - The fee for Drilling Services listed above will be invoiced on a lump sum basis of \$6,460.00.**

**Task 102 - The fee for the Geotechnical Report and Laboratory Services listed above will be invoiced on a lump sum basis of \$5,870.00.**

**TOTAL COST OF DRILLING AND GEOTECHNICAL REPORT SERVICES: \$12,330.00**

**Based on the proposed loading criteria and our knowledge of the soils in the area from a previous investigation Olsson performed for Elm Creek Public Schools, we anticipate shallow foundations will be sufficient to support the proposed structure. As such, in lieu of the requested number and depth of borings, we would recommend drilling four 30-foot-deep borings and one 8-foot-deep boring to analyze the proposed addition and pavement. If this option is selected, the total cost of drilling and geotechnical report services would be \$10,000.00.**

Should Client request work in addition to the above Scope of Services, Olsson will invoice Client for such additional services (Optional Additional Services) at the current standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses, if any. Olsson will not commence work on Optional Additional Service without Client's prior written approval.

Olsson is committed to providing quality service to its clients, commensurate with their wants, needs and desired level of risk. If a portion of this proposal does not meet your needs, or if those needs have changed, Olsson stands ready to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. If you have any questions or concerns, please call Dallas Schroeder at 308-398-2996 (office). We look forward to hearing from you and working with you on this project.

G:\Lincoln\Admin\LETPROP\GTEC\Proposals\2021\Structures\Elm Creek Public School Addition\Elm Creek Public School Add Geotech Scope of Service and Fee 9.30.21.docx





**NICHOLAS R. NORTON**  
nnorton@jacobsenorr.com

October 8, 2021

Elm Creek Public Schools  
c/o Steve Williams, Attorney  
KSB School Law  
Via email only to: [steve@ksbschoollaw.com](mailto:steve@ksbschoollaw.com)

Re: Land previously held by School District No. 83

Dear Mr. Williams:

As we discussed last week, my firm represents several of the children of Harold and Charlotte Burkey: Susanne Guthrie, Sharon Schroeder, Peggy Burkey, and Bill Burkey. I write this letter in hopes of resolving the real estate title issue we have discussed, as set forth in more detail below. Please add this item to the agenda at the next regular board meeting, which I understand to be scheduled for Monday, October 11, 2021.

The above-listed Burkey children are the current owners of certain real estate located within Buffalo County, specifically the NW1/4 of Section 29, Township 10, Range 18, West of the 6<sup>th</sup> P.M., which real estate is currently under contract for sale to a third party. In reviewing the title record for the purpose of issuing a title commitment, Nebraska Title Company identified a defect that is required to be resolved before the transaction can be closed. In 1932, the previous owners of said real estate issued a warranty deed for one acre to “School District No. 83, of Buffalo County, Nebraska” (the “1932 Deed”). The 1932 Deed indicated that consideration for that acre was \$100.00 and further contained a reversionary clause that provided the land would revert back to the then-owners of the quarter in the event that the location ceased to be used as a school. A copy of the deed is enclosed with this letter for your reference. District 83 ceased to use the land as a school in 1980. Thereafter, District 83 dissolved and sold its assets at a public auction. All parties understood from that point forward that District 83 ceased to exist and that the real estate at issue here was owned by the Burkey family. At some point thereafter, Elm Creek Public School District apparently expanded its boundaries to include the school site, but at no point did the District claim or exercise any rights of ownership of the subject property.

Based upon the plain language of the 1932 Deed and the course of conduct between the parties, the Burkey children should be considered the true and only lawful owners of the subject property, as it is undisputed that all conditions of the reverter therein have been met. Based upon our conversation last week, I understand that you challenge this conclusion based upon your reading of certain statutes and subsequent case law within the State of Nebraska. I also understand your position to be that the District cannot walk away from its claim of ownership to

the subject property without being paid fair market value for the same. This position is unacceptable to my clients for several reasons.

First, as noted above, everyone involved in this process back in 1980 understood what was happening and intended the subject property to revert to ownership by Harold Burkey. While it is unfortunate that no deed was recorded at a time when everyone involved was living and the plan was fresh in their minds, it does not change that the Burkey family was placed in possession of the real estate by District 83 with the intent of transferring ownership.

Second, my clients (or their parents) have paid real estate taxes on the subject property for more than 40 years, along with insurance premiums related to the same. At all times since the early 1980s, the Burkey family, not the School District, has maintained the property and managed the risk presented by the unsafe structure thereon. The District did not even make any claim to ownership until this issue arose last week. It would be inequitable for the Burkey family to now pay the District for land on which they've performed all maintenance and paid all expenses for an entire generation. This is especially so where the 1932 Deed clearly expressed the intent of the parties that ownership would revert to the then-owners of the quarter after the initial grant of the real estate fulfilled its purpose.

Third, the fair market value of a one-acre parcel with a dilapidated school building is virtually nothing and might actually be negative given the condition of the property. One acre is too small for a residential lot in this area, so the highest and best use of the property is probably to convert it back into productive pasture (it is currently best described as "waste"). Pursuant to the purchase agreement entered into between my clients and the third-party buyer in an arms-length transaction, productive pasture land within the quarter section being sold is valued at approximately \$1,800 per acre. As mentioned, the current school site is not suitable for pasture at this time. The old school building is neither usable in its current form, nor is it salvageable; rather, it presents little more than a hazard upon the property and will ultimately need to be removed to alleviate potential liability – regardless of who the owner is. The cost of removal is expected to be between \$2,000 and \$3,000. Additionally, the value of the acre upon which the school house sits is significantly de-valued by the hazard to livestock created by the dilapidated building, rendering it worth even less as pasture land. While my clients are willing to be reasonable here in seeking a solution that works for everyone, "fair market value" is an elusive term for real estate in this condition.

Unfortunately, if we cannot reach an amicable solution, my clients will have little choice but to institute litigation to clear this title issue. Obviously, this too should be considered in your analysis of the value this particular parcel has to the School District. Expenses of litigation alone could quickly eclipse any value the property may otherwise have. While it is not my client's desire to engage in litigation, they do intend to move forward with the current sale and will take whatever steps are necessary to address the title issue and advance to closing.

It is my clients' position that the District needs to step up and do the right thing – that is, honoring the agreements of those who came before and disclaiming any interest it believes it has in the subject property without compensation. This is the right thing to do and would be in line with the position taken by all parties involved for more than 40 years. However, in an effort to avoid further headache and expensive litigation necessary to quiet title to the real estate in question, my clients are willing to pay up to \$500 in exchange for a quit claim deed to the subject real estate to my clients in the form enclosed with this letter. Given all of the circumstances described herein, we feel this is a very fair offer and we ask that you approve this offer and authorize a designated representative of the District to execute the enclosed deed in exchange for said payment.

Very truly yours,

JACOBSEN, ORR, LINDSTROM  
& HOLBROOK, P.C., L.L.O.  
Attorneys at Law



Nicholas R. Norton

NRN:mm

cc: Susanne Guthrie (via email)  
Bret Schroder ([bret.schroder@elmcreekschools.org](mailto:bret.schroder@elmcreekschools.org))  
J. C. Ourada ([ourada007@hotmail.com](mailto:ourada007@hotmail.com))

**EXTRACT FROM MINUTES OF MEETING  
OF THE BOARD OF EDUCATION  
OF BUFFALO COUNTY SCHOOL DISTRICT 0009  
(GENERAL OBLIGATION BONDS)**

A meeting of the Board of Education of Buffalo County School District 0009 (Elm Creek Public Schools), was convened in open and public session at \_\_\_ p.m. on \_\_\_\_\_, 2021, at \_\_\_\_\_, in \_\_\_\_\_, Nebraska, the usual meeting place of said Board. Present were:

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\_\_\_\_\_. Absent were: \_\_\_\_\_.

Notice of the meeting was given in advance thereof by publishing or posting, an affidavit of publication or certificate of posting being attached to these minutes, which notice advised of the availability of the agenda for the meeting. Notice of the meeting was given in advance to all Members of the Board of Education and a copy of their acknowledgment of receipt of notice and the agenda is attached to these minutes. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

At the beginning of the meeting, the President publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was being held.

The President stated it was necessary for the Board to consider the issuance of bonds. After discussion, Board Member \_\_\_\_\_ introduced and moved the adoption of the following resolution:

## RESOLUTION

BE IT RESOLVED BY THE BOARD OF EDUCATION OF BUFFALO COUNTY SCHOOL DISTRICT 0009, IN THE STATE OF NEBRASKA, as follows:

Section 1. The Board of Education (the “Board”) of Buffalo County School District 0009, in the State of Nebraska (the “Issuer”), hereby finds and determines as follows:

(a) The Issuer is duly organized and presently exists as a Class III School District under Chapter 79, Reissue Revised Statutes of Nebraska, 2014, as amended;

(b) Pursuant to a resolution previously adopted by said President and Board, an election was called and held on September 14, 2021, on the proposition for the issuance of bonds of the Issuer in the stated principal amount not to exceed \$11,980,000, in order to pay the costs of constructing additions to the existing school building and providing for necessary furniture and apparatus for such school building and additions (collectively, the “Project”); that notice of said election was given as provided by law; that, according to the Election Commissioner’s Report upon the results of the canvass of such election, the proposition for such issuance of bonds received the approval of 375 votes cast for said proposition at said election, and was opposed by 259 votes cast against said proposition; and that a proposition for the issuance of bonds for such purpose was not submitted to the electors of the Issuer within six months preceding the date of such election;

(c) It is necessary and advisable for the Issuer to issue and sell its general obligation bonds, in one or more series, in the stated principal amount of up to \$11,980,000 to provide funds to pay the costs of the Project;

(d) All conditions, acts and things required by law to exist or to be done precedent to the issuance of the Issuer’s General Obligation Bonds, in one or more series, in the stated principal amount of up to \$11,980,000 pursuant to Section 10-701 to 10-716.01, R.R.S. Neb. 2012, as amended, do exist and have been done as required by law.

Section 2. There shall be and are hereby ordered issued the negotiable bonds of the Issuer to be designated as “General Obligation Bonds” in the stated principal amount of not to exceed ELEVEN MILLION NINE HUNDRED EIGHTY THOUSAND DOLLARS (\$11,980,000) (the “Bonds”), with said Bonds to be issued in such year or years in one or more series, to mature in such amounts and to become due on such dates and in such years and bear interest at the rates per annum as shall be determined in a written designation that may be included as a part of a Bond Purchase Agreement or other confirmation of the initial purchaser’s agreement to purchase the Bonds, including final rates, maturities and pricing for the Bonds and the aggregate purchase price therefor (such acceptance, purchase agreement and/or other confirmation is sometimes hereinafter referred to as the “Designation”) signed by either the President or the Vice President of the Board or the Superintendent of Schools (each, an “Authorized Officer”) on behalf of the Board. First National Capital Markets, Inc., as the Issuer’s financial advisor (the “Financial Advisor”), is hereby authorized to (i) proceed with the public sale of the Bonds on such date as may be determined by an Authorized Officer in consultation with the Issuer’s Financial Advisor, or (ii)

assist the Issuer with the engagement of an underwriter relating to the sale of the Bonds. The Bonds shall be issued within the following parameters:

- (a) the true interest cost on the Bonds shall not exceed 4.50% per annum;
- (b) the aggregate principal amount of the Bonds shall not exceed \$11,980,000;
- (c) the Bonds may be issued on the basis of original issue discount and/or original issue premium; provided that the aggregate amount of original issue premium and original issue discount (if any) results in an aggregate net original issue discount (if any) not in excess of two percent (2.00%) of the stated principal amount of the Bonds;
- (d) the longest maturity of the Bonds may not be later than December 31, 2042;
- (e) Two or more principal maturities of the Bonds may be combined and issued as “term bonds” and the Authorized Officer may determine mandatory sinking fund payments and mandatory redemption amounts; any Bonds issued as “term bonds” shall be redeemed at a redemption price equal to 100% of the principal amount thereof plus accrued interest thereon to the date of redemption and may be selected for redemption by any random method of selection determined appropriate by the Registrar (as hereinafter designated) or by the Depository (as hereinafter designated).

The Authorized Officers are hereby authorized to make such determinations on behalf of the Board and to evidence the same by execution and delivery of the Designation and such determinations, when made by the Authorized Officers, shall constitute the action of the Board without further action of the Board.

The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be the date of delivery thereof or such other date of original issue, if any, as may be set forth in the Designation. Interest on the Bonds, at the respective rates for each maturity, shall be payable on June 15, 2022, and semiannually thereafter on June 15 and December 15 of each year (or such other date or dates as may be determined in the Designation, each an “Interest Payment Date”) and the Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date to which interest is paid or provided for, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the close of business on the fifteenth day immediately preceding the Interest Payment Date (or such other date as may be established in the Designation, the “Record Date”), subject to the provisions of Section 4 hereof. The Bonds shall be numbered from R-1 upwards in the order of their issuance. No Bonds shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds shall be made by the Paying Agent and Registrar, as designated pursuant to Section 3 hereof, by mailing check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the

Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 3 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to said Paying Agent and Registrar. The Issuer and said Paying Agent and Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the Issuer nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this resolution shall be valid and effectual and shall be a discharge of the Issuer and said Paying Agent and Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

Section 3. Unless as otherwise provided in the Designation, BOKF, National Association, of Lincoln, Nebraska, is hereby designated to serve as Paying Agent and Registrar for the Bonds. Said Paying Agent and Registrar shall serve in such capacities under the terms of an agreement entitled "Paying Agent and Registrar Agreement" between the Issuer and said Paying Agent and Registrar as approved by an Authorized Officer. The Paying Agent and Registrar shall keep and maintain for the Issuer books for the registration and transfer of the Bonds at its principal corporate trust office (for purposes of this Resolution and the Bonds, "principal corporate trust office" shall mean the designated corporate trust office of the Paying Agent and Registrar in Lincoln, Nebraska, or any successor designated corporate trust office established by said Paying Agent and Registrar). The names and registered addresses of the registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the principal corporate trust office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the Issuer will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new Bond or Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this resolution, one Bond may be transferred for several such Bonds of the same interest rate and maturity and for a like aggregate principal amount, and several such Bonds may be transferred for one or several such Bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be cancelled and destroyed. All Bonds issued upon transfer of the Bonds so surrendered shall be valid obligations of the Issuer evidencing the same obligations as the Bonds surrendered and shall be entitled to all the benefits and protection of this resolution to the same extent as the Bonds upon transfer of which they were delivered. The Issuer and said Paying Agent and Registrar shall not be required to transfer any Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of thirty (30) days next preceding the date fixed for redemption.

Section 4. In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the

Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 5. The Bonds shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof (or such other early redemption date as may be provided for in the Designation, subject to any limitations of applicable law), at the principal amount thereof plus accrued interest to the date fixed for redemption (or such other early redemption provisions as may be provided for in the Designation, subject to limitations of applicable law). Any Bonds maturing as term bonds (as may be determined in the Designation) shall be redeemed for the years and principal amounts as determined in the Designation. Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond to be redeemed shall be given by the Paying Agent and Registrar by mail not less than thirty (30) days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond to be redeemed at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by number and maturity, the date of issue and the date fixed for redemption and state that such Bond or Bonds are to be presented for prepayment at the office of the Paying Agent and Registrar. Notice of redemption of term bonds called for mandatory redemption shall be given without further direction by the Issuer. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of any proceedings of the Board designating the Bonds called for redemption or the effectiveness of any such call for the Bonds for which notice by mail has been properly given and the Board shall have the right to direct further notice of redemption for any such Bond for which defective notice has been given. In the event term maturities and mandatory redemption amounts are determined in the Designation, the provisions of this Section 5 shall apply generally to mandatory redemptions. Any such mandatory redemptions shall be at the principal amount redeemed plus accrued interest to the date set for redemption.

Section 6. If the date for payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 7. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF BUFFALO

GENERAL OBLIGATION BOND, SERIES \_\_\_\_\_  
OF BUFFALO COUNTY SCHOOL DISTRICT 0009  
(ELM CREEK PUBLIC SCHOOLS)

No. \_\_\_\_\_ \$ \_\_\_\_\_  
Interest Rate                      Maturity Date                      Date of Original Issue                      CUSIP No.  
\_\_\_\_\_ %                      \_\_\_\_\_, 20\_\_\_\_                      \_\_\_\_\_, \_\_\_\_\_

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That Buffalo County School District 0009 (Elm Creek Public Schools), in the State of Nebraska (the "Issuer"), hereby acknowledges itself to owe and for value received promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue shown above or most recent Interest Payment Date to which interest has been paid or provided for, whichever is later, at the rate per annum specified above, payable \_\_\_\_\_, 20\_\_\_\_, and semiannually thereafter on \_\_\_\_\_ and \_\_\_\_\_ of each year (each, an "Interest Payment Date"). Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of this bond is payable upon presentation and surrender of this bond at the designated corporate trust office of \_\_\_\_\_, the Paying Agent and Registrar, in \_\_\_\_\_. Interest on this bond will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's address as shown on such books and records (the "Record Date"). Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the applicable Record Date and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available. For the prompt payment of this bond, principal and interest, as the same become due, the full faith, credit and resources of said Issuer are hereby irrevocably pledged.

This bond is one of an issue of fully registered bonds of the total principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), of even date and like tenor herewith, except as to date of maturity, rate of interest and denomination, which were issued by said Issuer for the purpose of paying the costs of constructing additions to the existing school building and providing for necessary furniture and apparatus for such school building and additions,

all in pursuance of Sections 10-701 to 10-716.01, R.R.S. Neb. 2012, as amended. All of said bonds are issued pursuant to a resolution duly adopted by the Board of Education of said Issuer (the "Resolution"). Said bonds are issued pursuant to the approving vote of the voters of the Issuer at an election held on September 14, 2021, for which notice was given as required by law.

The Bonds shall be subject to redemption in whole or in part on any date on or after the fifth anniversary of the date of original issue hereof, at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the date of redemption.

[The bonds of this issue maturing as term bonds on \_\_\_\_\_, 20\_\_ (the "Term Bonds") shall be redeemed, in part, prior to their stated maturity, on \_\_\_\_\_, 20\_\_ and on \_\_\_\_\_ of each year thereafter until final stated maturity thereof with such mandatory redemptions and payment at maturity to be for the dates and in the amounts set forth below:

<u>Date of Redemption</u>	<u>Amount Required to be Redeemed</u>
---------------------------	---------------------------------------

Such mandatory redemptions for such bonds due as term bonds shall be at a price equal to \_\_\_% of the principal amount redeemed, plus accrued interest to the date fixed for redemption. The Paying Agent and Registrar shall select such bonds for optional or mandatory redemption using any random method of selection determined appropriate by Paying Agent and Registrar.]

Notice of any redemption shall be given by mail, sent to the registered owner of any bond called for redemption at said registered owner's address in the manner provided in the resolution authorizing said bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the designated corporate trust office of the Paying Agent and Registrar in Lincoln, Nebraska, upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Resolution authorizing said issue of bonds, subject to the limitations therein prescribed. The Issuer, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent and Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is

not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

AS PROVIDED IN THE RESOLUTION REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE RESOLUTION, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE RESOLUTION TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT AND REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS NOTE MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE RESOLUTION.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREOF IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSONS IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law and that the indebtedness of this Issuer, including this bond, does not exceed any limitation imposed by law. The Issuer agrees that it shall cause to be levied and collected annually a special levy of taxes on all the taxable property in said Issuer for the purpose of paying and sufficient to pay the interest and principal of this bond as and when such interest and principal become due.

This bond shall not be valid and binding on the Issuer until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Board of Education of the Issuer has caused this bond to be executed on behalf of the Issuer with the facsimile signatures of the President and the Secretary of said Board, all as of the date of original issue shown above.

BUFFALO COUNTY SCHOOL DISTRICT 0009,  
IN THE STATE OF NEBRASKA

By: \_\_\_\_\_ (Sample—Do Not Sign)  
President

ATTEST:

\_\_\_\_\_  
(Sample—Do Not Sign)  
Secretary

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by resolution of the Board of Education of Buffalo County School District 0009, in the State of Nebraska, as described in the foregoing bond.

BOKF, NATIONAL ASSOCIATION  
Lincoln, Nebraska  
Paying Agent and Registrar

By: \_\_\_\_\_ (Sample—Do Not Sign)  
Authorized Signature

(FORM OF ASSIGNMENT)

For value received \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ (Social Security or Taxpayer Identification Number \_\_\_\_\_) the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the same on the books of registration in the office of the within mentioned Paying Agent and Registrar with full power of substitution in the premises.

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

\_\_\_\_\_

Registered Owner(s)

Signature Guaranteed

By: \_\_\_\_\_

\_\_\_\_\_  
Authorized Officer

NOTE: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 8. Each of the Bonds shall be executed on behalf of the Issuer with the manual or facsimile signatures of the President and Secretary of the Board. The Bonds shall be issued initially as “book-entry-only” bonds using the services of The Depository Trust Company (the “Depository”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a Letter of Representations (the “Letter of Representations”) in the form required by the Depository (which may be in the form of a blanket letter, including any such blanket letter previously executed and delivered), for and on behalf of the Issuer, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The Issuer and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a “Beneficial Owner”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds.

The Paying Agent and Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the Issuer, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available

Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the Issuer determines that it is desirable that certificates representing the Bonds be delivered to the ultimate Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this resolution to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee; or

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar Agreement.

(f) In the event of any partial redemption of a Bond, unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this resolution relating to partial redemption of Bonds, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced, the Issuer shall immediately provide a supply of printed bond certificates for issuance upon the transfers from the Depository and subsequent transfers or in the event of partial redemption. In the event that such supply shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement Bonds upon transfer or partial redemption, the Issuer agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting President and Secretary of such Board. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid

and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond.

The Bonds shall not be valid and binding on the Issuer until authenticated by the Paying Agent and Registrar. The Issuer shall maintain a record of information with respect to such bonds as required under Section 10-140, R.R.S. Neb. 2012, as amended, and shall cause the same to be filed in the office of the Auditor of Public Accounts of the State of Nebraska. Thereafter the Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, the Paying Agent and Registrar is authorized to deliver them to the initial purchaser thereof for an aggregate purchase price to be determined in the Designation. Said initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Resolution. Such purchaser and its agents, representatives and counsel (including bond counsel and the Issuer's Financial Advisor) are hereby authorized to take such actions on behalf of the Issuer as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing. On behalf of the Issuer, each of the Authorized Officers is hereby authorized to (i) proceed with the public sale of the Bonds on such date as may be determined by an Authorized Officer in consultation with the Issuer's Financial Advisor, or (ii) engage an underwriter for the sale of the Bonds in consultation with the Issuer's Financial Advisor.

Section 9. The Secretary of the Board of the Issuer is directed to make and certify a transcript of the proceedings of the Issuer precedent to the issuance of said Bonds which shall be delivered to the purchaser of said Bonds. The President or Secretary of the Board shall certify the taxable valuation, the number of children of school age residing in the Issuer and the total bonded indebtedness of the Issuer.

Section 10. The Board shall cause to be levied and collected annually a special levy of taxes on all the taxable property in the Issuer for the purpose of paying and sufficient to pay the interest and principal of the Bonds as and when such interest and principal become due according to the terms thereof. The County Treasurer of Buffalo County is hereby directed to make payment of taxes collected for the payment of the Bonds, in amounts sufficient and at the appropriate times for the payment of principal and interest on the Bonds, to the Paying Agent and Registrar upon written directions from the Treasurer of the Issuer, as delivered and in effect from time to time.

Section 11. The Issuer hereby covenants to the purchaser and registered owners of the Bonds hereby authorized that it will make no use of the proceeds of said bond issue, including tax levy monies intended to be used to pay principal and interest on said Bonds, which would cause said Bonds to be arbitrage bonds within the meaning of Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103(b) and 148 and all applicable regulations thereunder throughout the term of said bond issue. The Issuer hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status of interest payable on the Bonds. The Issuer represents and warrants that the Bonds are not "private activity bonds" as such term is defined in Section 141(a) of the Code and agrees to take all further actions, if any, necessary on its part to qualify the Bonds herein authorized as "tax-exempt obligations." Unless otherwise provided in the Designation, the Issuer hereby designates

the Bonds as its “qualified tax-exempt obligations” pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue tax-exempt bonds or other tax-exempt interest bearing obligations aggregating in principal amount more than \$10,000,000 during the calendar year that the Bonds are issued (taking into consideration the exception for current refunding issues).

Section 12. The net principal proceeds of the Bonds shall be applied upon order of the President of the Board or other duly authorized officer(s) to pay a portion of the costs of constructing the portion of the Project intended to be financed thereby, including the costs of issuing the Bonds. Such proceeds may be held by the Issuer’s Treasurer or by a trustee or custodian appointed for such purposes. The Issuer will provide all other funds necessary for the acquisition, construction and completion of such projects, and the President and Secretary are further authorized to take any and all actions necessary or appropriate in connection therewith.

Section 13. The preparation, use and distribution of a Notice of Sale, a Preliminary Official Statement or other offering materials, in such form and content as the Authorized Officers shall, in consultation with the Issuer's Financial Advisor, determine to be necessary or appropriate in order to effectuate the issuance and sale of the Bonds. Each Authorized Officer is hereby authorized to deem any such offering materials to be final for purposes of the Rule 15c2-12. Upon consultation with the Issuer's Financial Advisor, any of the Authorized Officers are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance and sale of the Bonds as contemplated by this Resolution, including the execution of a bid award in the event of a public sale or the execution of a Bond Purchase Agreement in the event of a negotiated sale with an underwriter. Each of the Authorized Officers is hereby authorized to make award of the Bonds to the bidder determined to have made that bid at public sale or to the underwriter at a negotiated sale that is determined by such officer to be in the best interests of the Issuer.

Section 14. The Issuer hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the Bonds, a continuing disclosure undertaking in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission (the “Rule”) in such form as determined necessary and appropriate by such Authorized Officer (the “Continuing Disclosure Undertaking”) and (b) covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this Resolution, failure of the Issuer to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any beneficial owner or any registered owner of a Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer to comply with its obligations under this Section, and under the Continuing Disclosure Undertaking. Each of the Authorized Officers is authorized to appoint a Dissemination Agent for the Bonds.

Section 15. In order to promote compliance with certain federal tax and securities laws relating to the bonds herein authorized, the policy and procedures attached hereto as Exhibit “A” (the “Post-Issuance Compliance Policy and Procedures”) is hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance

Compliance Policy and Procedures and any similar policy or procedures previously adopted and approved, the attached Post-Issuance Compliance Policy and Procedures shall control.

Section 16. The officers of the Issuer, or any one or more of them, are hereby authorized to execute and deliver any and all certificates and documents and to take any and all actions determined appropriate in connection with the issuance and sale of the Bonds.

Section 17. This resolution shall take effect and be in force from and after its passage as provided by law.

ADOPTED this \_\_\_\_ day of October, 2021.

BUFFALO COUNTY SCHOOL DISTRICT  
0009, IN THE STATE OF NEBRASKA

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

## Exhibit A

### **Policy and Procedures Federal Tax Law and Disclosure Requirements for Tax-exempt Bonds and/or Tax Advantaged Bonds**

**ISSUER NAME:** Buffalo County School District 0009, in the State of Nebraska

**COMPLIANCE OFFICER (BY TITLE):** Superintendent of Schools

#### **POLICY**

It is the policy of the Issuer identified above (the “Issuer”) to comply with all Federal tax requirements and securities law continuing disclosure obligations for its obligations issued as tax-exempt bonds (or as tax credit, direct pay subsidy or other tax-advantaged bonds, as applicable) to ensure, as applicable (a) that interest on its tax-exempt bonds remains exempt from Federal income tax, (b) that the direct payments or tax credits associated with its bonds issued as tax advantaged bonds are received in a timely manner and (c) compliance with any continuing disclosure obligations of the Issuer with respect to its outstanding bonds.

#### **PROCEDURES**

Compliance Officer. Review of compliance with Federal tax requirements and securities law continuing disclosure obligations as generally outlined below shall be conducted by the Compliance Officer identified above (the “Compliance Officer”). To the extent more than one person has been delegated specific responsibilities, the Compliance Officer shall be responsible for ensuring coordination of all compliance review efforts.

Training. The Compliance Officer shall evaluate and review educational resources regarding post-issuance compliance with Federal tax and securities laws, including periodic review of resources published for issuers of tax-exempt obligations by the Internal Revenue Service (either on its website at <http://www.irs.gov/taxexemptbond>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website [“EMMA”] at <http://www.emma.msrb.org>, or elsewhere).

Compliance Review. A compliance review shall be conducted at least annually by or at the direction of the Compliance Officer. The review shall occur at the time the Issuer’s annual audit takes place, unless the Compliance Officer otherwise specifically determines a different time period or frequency of review would be more appropriate.

Scope of Review.

*Document Review.* At the compliance review, the following documents (the “Bond Documents”) shall be reviewed for general compliance with covenants and agreements and applicable regulations with respect to each outstanding bond issue:

- (a) the resolution(s) and/or ordinance(s), as applicable, adopted by the governing body of the Issuer authorizing the issuance of its outstanding bonds, together with any documents setting the final rates and terms of such bonds (the “Authorizing Proceedings”),
- (b) the tax documentation associated with each bond issue, which may include some or all of the following (the “Tax Documents”):
  - (i) covenants, certifications and expectations regarding Federal tax requirements which are described in the Authorizing Proceedings;
  - (ii) Form 8038 series filed with the Internal Revenue Service;
  - (iii) tax certificates, tax compliance agreements, tax regulatory agreement or similar documents;

- (iv) covenants, agreements, instructions or memoranda with respect to rebate or private use;
  - (v) any reports from rebate analysts received as a result of prior compliance review or evaluation efforts;  
and
  - (vi) any and all other agreements, certificates and documents contained in the transcript associated with the Authorizing Proceedings relating to federal tax matters.
- (c) the Issuer's continuing disclosure obligations, if any, contained in the Authorizing Proceedings or in a separate agreement (the "Continuing Disclosure Obligations"), and
- (d) any communications or other materials received by the Issuer or its counsel, from bond counsel, the underwriter or placement agent or its counsel, the IRS, or any other material correspondence relating to the tax-exempt status of the Issuer's bonds or relating to the Issuer's Continuing Disclosure Obligations.

*Use and Timely Expenditure of Bond Proceeds.* Expenditure of bond proceeds shall be reviewed by the Compliance Officer to ensure (a) such proceeds are spent for the purpose stated in the Authorizing Proceedings and as described in the Tax Documents and (b) that the proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents, and (c) that any mandatory redemptions from excess bond proceeds are timely made if required under the Authorizing Proceedings and Tax Documents.

*Arbitrage Yield Restrictions and Rebate Matters.* The Tax Documents shall be reviewed by the Compliance Officer to ensure compliance with any applicable yield restriction requirements under Section 148(a) of the Internal Revenue Code (the "Code") and timely calculation and payment of any rebate and the filing of any associated returns pursuant to Section 148(f) of the Code. A qualified rebate analyst shall be engaged as appropriate or as may be required under the Tax Documents.

*Use of Bond Financed Property.* Expectations and covenants contained in the Bond Documents regarding private use shall be reviewed by the Compliance Officer to ensure compliance. Bond-financed properties shall be clearly identified (by mapping or other reasonable means). Prior to execution, the Compliance Officer (and bond counsel, if deemed appropriate by the Compliance Officer) shall review (a) all proposed leases, contracts related to operation or management of bond-financed property, sponsored research agreements, take-or-pay contracts or other agreements or arrangements or proposed uses which have the potential to give any entity any special legal entitlement to the bond-financed property, (b) all proposed agreements which would result in disposal of any bond-financed property, and (c) all proposed uses of bond-financed property which were not anticipated at the time the bonds were issued. Such actions could be prohibited by the Authorizing Proceedings, the Tax Documents or Federal tax law.

*Continuing Disclosure.* Compliance with the Continuing Disclosure Obligations with respect to each bond issue shall be evaluated (a) to ensure timely compliance with any annual disclosure requirement, and (b) to ensure that any material events have been properly disclosed as required by the Continuing Disclosure Obligation.

Record Keeping. If not otherwise specified in the Bond Documents, all records related to each bond issue shall be kept for the life of the indebtedness associated with such bond issue (including all tax-exempt refundings) plus six (6) years.

Incorporation of Tax Documents. The requirements, agreements and procedures set forth in the Tax Documents, now or hereafter in existence, are hereby incorporated into these procedures by this reference and are adopted as procedures of the Issuer with respect to the series of bonds to which such Tax Documents relate.

Consultation Regarding Questions or Concerns. Any questions or concerns which arise as a result of any review by the Compliance Officer shall be raised by the Compliance Officer with the Issuer's counsel or with bond counsel to determine whether non-compliance exists and what measures should be taken with respect to any non-compliance.

VCAP and Remedial Actions. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers under certain circumstances to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the

remedial actions available to issuers of certain bonds under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

**End of Exhibit A**

Board Member \_\_\_\_\_ seconded the motion and upon roll call upon the question of adoption of said resolution, the following Board Members voted AYE:

\_\_\_\_\_  
\_\_\_\_\_. The following voted NAY: \_\_\_\_\_. A majority of the Board Members having voted in favor of the adoption of said resolution, the President declared the resolution adopted.

DATED this \_\_\_ day of October, 2021.

\_\_\_\_\_  
President of the Board of Education

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

\*\*\*\*

I the undersigned Secretary for Buffalo County School District 0009 (the “Issuer”) hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the President and Board of Education of said Issuer on \_\_\_\_\_, 2021; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily available for public inspection at the office of the Secretary; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting; and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

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Secretary

**ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF MEETING**

The undersigned members of the governing board (the "Board") of Buffalo County School District 0009, in the State of Nebraska (the "Issuer"), hereby acknowledge receipt of notice of a meeting of the Board and the agenda for such meeting held at \_\_\_\_ p.m., on \_\_\_\_\_, 2021, at \_\_\_\_\_ in \_\_\_\_\_, Nebraska.

DATED as of the \_\_\_\_ day of October, 2021.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that \_\_\_\_\_ was absent from the meeting but that, to my personal knowledge, such member(s) received advance notice of the meeting and agenda.

\_\_\_\_\_  
Board Secretary

October 6, 2021

Dr. Bret Schroder, Superintendent  
Elm Creek Public Schools  
230 East Calkins Avenue  
Elm Creek, Nebraska 68836

**SUBJECT:** Proposal for Geotechnical Engineering Services  
Proposed Elm Creek Public School Addition  
230 East Calkins Avenue  
Elm Creek, Nebraska  
GSI No. P2053044

Dear Dr. Schroder:

GSI Engineering, LLC (GSI) is pleased to present this proposal to provide the geotechnical engineering services for the above-referenced project. This proposal is based upon a preliminary understanding of the project requirements as stated in an email provided by Mr. Jacob Sertich with Wilkins on September 29, 2021 and a follow up email on October 4, 2021.

GSI is committed to providing a high level of service to its clients. If a change in the proposed scope of work is requested, we are prepared to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications such as changes in scope, methodology, scheduling, and contract terms and conditions beyond that which is described in this proposal may result in additional risks assumed by you and may require adjustments to our fee.

#### **PROJECT DESCRIPTION**

The proposed project will be located at 230 East Calkins Avenue in Elm Creek, Nebraska. We understand the development will consist of an addition located on the west side of the existing school. We understand the building will consist of a two-story steel framed construction with a concrete slab-on-grade floor. We estimate the structures will have maximum column and continuous wall loads on the order of 180 kips and 10 kips per linear foot, respectively.

We assume site grading required to bring the building pad to the desired elevation will be minimal, with cuts or fills less than 2 feet. Please contact us if site grading will be more significant so we may evaluate and adjust our scope of service if necessary.

#### **SCOPE OF SERVICES**

GSI will request a utility clearance through Nebraska One-Call. The client will be responsible for locating and marking nonmember utilities or private utilities not located by Nebraska One-Call. GSI is not responsible for loss or damage resulting from unmarked utilities.

We propose to explore the subsurface conditions at this site by drilling 1 boring to a depth of approximately 30 feet and 4 borings to a depth of approximately 50 feet below grade within the building pad and 1 boring to a depth of approximately 8 feet in the additional paving area. The top of boreholes will be surveyed by the drill crew relative to a common on-site point.



We anticipate that the pavement will support predominately light passenger cars with less frequent panel delivery vans, passenger vans, and trash trucks.

Logs of the subsurface conditions encountered in the borings will be recorded by our field personnel at the time of subsurface exploration. Samples will be obtained at selected depth intervals and will be returned to our laboratory for testing and analysis.

We anticipate that the laboratory testing program may include the following tests:

- Moisture Content (ASTM D2216).....48
- Unconfined Compression (ASTM D2166)..... 10
- Atterberg Limits (ASTM D4318).....2

The actual type and number of tests will depend on the soil conditions we encounter.

Based on the findings of the field and laboratory programs and engineering analyses, we will provide opinions and recommendations regarding the following:

- Subsurface soil conditions, including depth and consistency of soil strata;
- Groundwater levels as observed during field work, excluding quantitative determinations of flow or dewatering rates;
- Site grading recommendations, including a discussion of anticipated excavation requirements;
- Suitable foundation type and depth, allowable bearing pressures, and estimated settlements;
- Treatment and/or removal of unsuitable bearing soils, if encountered;
- IBC seismic site class;
- Slab-on-grade construction;
- Excavation and trenching considerations;
- Suitability of on-site material for structural fill; and
- Pavement structural section for parking and drive areas.

We will present our opinions and recommendations in a written report which will include a map of the boring locations, logs of the explorations, and laboratory test results. We will submit an electronic copy (pdf format) of the final report.

**SCHEDULE**

We can begin the geotechnical exploration within approximately 3 to 5 working days after your authorization to proceed (weather permitting). We anticipate completion of the final report within two to three weeks from the completion of our field work. We will provide verbal updates as information is developed in order to expedite the project schedule.

**FEES AND CONDITIONS**

Our services will be performed in accordance with the attached General Conditions. The fee for the geotechnical engineering services described herein is a lump sum of \$5,000.00. The referenced price assumes that the site is accessible to a standard truck-mounted drilling rig. Additional or



deeper borings can be performed while our crew is on-site at a unit rate of \$22.00 per linear foot. This unit rate includes any additional laboratory testing and analyses associated with the additional borings.

If any significant changes are made in the location or proposed construction as described above, or if the encountered soil conditions are significantly different from those anticipated, additional study and analyses or more or deeper field exploration may be required. Any work required beyond the scope of that proposed above will be undertaken only after receiving your prior authorization and after an adjustment has been made to our fee to cover the additional work.

Please note that our fees are due within 30 days of the presentation of our invoice. If payment within 30 days is not possible, we should be contacted prior to commencing work to develop an acceptable payment schedule.

**LIMITATIONS**


The proposed exploration described herein specifically excludes the assessment of environmental characteristics, particularly those involving hazardous and/or toxic substances. A separate or concurrent environmental assessment may be appropriate prior to construction. We would be pleased to prepare a proposal for these services if requested. In the event that obviously suspicious subsurface materials are encountered visually or by odor in the field explorations, we will immediately terminate the explorations and notify you regarding the situation.


During the course of the performance of GSI's services, hazardous materials may be discovered. GSI will assume no responsibility or liability whatsoever for any claim, loss of property value, damage, or injury which results from pre-existing hazardous materials being encountered or present on the project site or from the discovery of such hazardous materials. You will be asked to sign an agreement indemnifying GSI from liability or loss arising out of the services covered by this proposal, including liability or loss in connection with pre-existing hazardous materials.

**CLOSURE**

GSI appreciates the opportunity to submit this proposal and we look forward to working with you on this project. If you are in agreement with the terms of this proposal, please sign and return the enclosed services agreement. A fully executed copy will be returned to you. If you have any questions or need additional information, please contact GSI's Grand Island office.

Respectfully submitted,  
GSI Engineering, LLC

  
James D. Sorgenfrei, P.E.  
Senior Geotechnical Engineer

  
Matthew N. Tye, P.E.  
Senior Geotechnical Engineer

JDS/MNT

Attachments: Geotechnical Services Agreement, General Conditions, and ASFE

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**GSI ENGINEERING, LLC**

**GSI No. P2153044**

Geotechnical Services Agreement

**PARTIES**

This Agreement is made on October 6, 2021, between

Elm Creek Public Schools  
230 East Calkins Avenue  
Elm Creek, Nebraska 68836

And

GSI Engineering, LLC  
2960 North Diers Avenue  
Grand Island, Nebraska 68803

hereinafter called "Client"

hereinafter called "Consultant"

**PROJECT DESCRIPTION**

Client engages Consultant to provide Geotechnical Engineering Services in connection with the Elm Creek Public Schools addition project in Elm Creek, Nebraska.

**SCOPE OF SERVICES**

Consultant agrees to perform Geotechnical Engineering Services in accordance with attached proposal GSI No. P2153044, dated October 6, 2021. Client agrees that all services not expressly included are excluded from Consultant's Scope of Services.

**COMPENSATION**

Client agrees to compensate Consultant for the referenced services a lump sum of \$5,000.00.

**Client and Consultant acknowledge that each has read and agrees to the attached General Conditions, which are incorporated herein and made a part of this Agreement and apply to all services performed by Consultant.**

**Client: Elm Creek Public Schools**

**Consultant: GSI Engineering, LLC**

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

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

Print Name: \_\_\_\_\_

Print Name: James D. Sorgenfrei, P.E.

Title: \_\_\_\_\_

Title: Senior Geotechnical Engineer

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

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



## GENERAL CONDITIONS

### DEFINITIONS:

- A. **Contract Documents.** Plans, specifications, proposals, and Agreements between Client and GSI, including addenda, amendments, supplementary instructions, add-scopes and change orders.
- B. **Client.** The entity (individual person, corporation, non-profit organization, or other business entity) requesting GSI to perform the work as described in SCOPE of SERVICES under this Agreement.
- C. **Days.** Calendar day(s) unless otherwise stated.
- D. **Hazardous Materials.** Any toxic substance, chemical, radioactive material, pollutant or any material that is currently identified as hazardous under any federal, state or local law or regulation or is subject to special handling, disposal or clean-up. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollution.
- E. **Services.** The professional and technical services provided by GSI as set forth in the Agreements between Client and GSI and any written amendment to the Agreements.
- F. **Work.** The labor, materials, equipment, and services required to complete the work described in the Agreement between Client and GSI and any written amendment to the Agreement.

### SECTION 1: Independent Contractor

GSI Engineering, LLC (GSI) shall perform the Services and Work as an independent contractor. GSI shall have full control and discretion over and responsibility of supervising, managing, directing and controlling its employees, agents and subcontractors for all Work under this Agreement.

### SECTION 2: Scope of Services

GSI will perform Services and Work as described in the Contract Documents, which may be mutually amended by the Client and GSI in writing. Any mutual amendments to this Agreement in writing will become an amendment to this Agreement. GSI's Services under this Agreement include only those Services as specified in the Contract Documents. Client expressly waives any claim against GSI resulting from its failure to perform additional Services recommended by GSI, but not authorized by the Client, and any claim that GSI failed to perform Services that Client instructs GSI not to perform.

### SECTION 3: Client Responsibilities

In addition to payment for Services performed by GSI under this Agreement, Client agrees to: 1) furnish GSI with right-of-access to the site to conduct its Services; 2) assist and cooperate with GSI in any manner necessary and within its ability to facilitate GSI's performance under this Agreement; 3) supply GSI with all information and documents in Client's possession or knowledge that are relevant to the Services described in this Agreement; 4) execute all necessary manifests or other documents verifying ownership, possession or control over any Hazardous Materials; 5) provide the location of all known subsurface structures such as pipes, tanks, cables and private utilities; 6) as applicable, Client shall provide and deliver all samples for testing or provide instruction to GSI on their storage or shipment to Client; but, in either case, such samples remain the property of the Client. Client further agrees to meet its obligations under these general conditions.

### SECTION 4: Site Conditions

The Client is responsible for providing accurate information regarding all underground structures and utilities located at the site. In performing its Services and Work, GSI will take all reasonable precautions to avoid damage to underground structures or utilities. The Client also agrees to defend, indemnify and hold GSI harmless from any claims, payments or other liability, including costs and attorney fees, incurred by GSI for damages to underground structures or utilities which are not called to GSI's attention or correctly shown on the plans furnished to GSI.

To the extent enforceable, the Client must advise GSI of any known or suspected hazardous substances which may impact the Services that will be provided by GSI. If during the course of providing its Services, GSI observes or suspects the existence of unanticipated hazardous materials, GSI may at its option terminate any further Services or Work on the project and notify Client of this condition. Services or Work will be resumed only after a renegotiation of GSI's Services or Work and its fees. If such renegotiation does not lead to an amendment to this Agreement that is satisfactory to GSI, GSI may at its option terminate this contract. Client further agrees that GSI is not, and has no responsibility as, a handler, generator, operator, treater, storer, transporter or disposer of any known or unknown Hazardous Materials found at the Client's property and/or Site. Therefore, Client shall undertake or arrange for the handling, removal, treatment, storage, transportation and disposal of all hazardous substances found or identified at the site and/or Client's property.

### SECTION 5: Schedule and Change Orders

The schedule for GSI's Services or Work under this Agreement is set forth in GSI's proposal. If Client makes a request for additional Services or Work, alters the planned deliverables, suspends GSI's Services or Work for any period of time, or delays that occur due to causes not under GSI's control, the parties agree to equitably adjust the time for completion and the compensation for such Services or Work, including any necessary demobilization and subsequent remobilization, via a written change order. Unless otherwise agreed by the parties, such change orders must be in place in writing before any Services or Work can recommence.

### SECTION 6: Reports

GSI will furnish one electronic copy of any report to the Client. Additional electronic copies are available upon request. Hard copies will be furnished at the expense of the Client.

### SECTION 7: Payments to GSI

GSI will, to the best of its ability, perform the Services or Work and accomplish the objectives defined in this Agreement within any written cost estimate provided by GSI. Client recognizes that changes in scope and schedule and unforeseen circumstances can influence the successful completion of Services or Work within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services or Work will be completed for that amount; rather, it indicates that GSI will not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so as set forth in Section 5. GSI will submit invoices to the Client monthly and a final bill upon completion of its Services or Work based on the fee structure in the Contract Documents. Payment is due upon presentation of GSI's invoice and is past due 30 days from the invoice date. Client agrees to pay a finance charge of 1.5% per month, but not exceeding the maximum rate allowed by law, on past due accounts.

### SECTION 8: Ownership of Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by GSI are instruments of service. Therefore, they shall remain the property of GSI, unless there are other contractual arrangements made with Client.



## GENERAL CONDITIONS

### SECTION 9: Confidentiality

GSI shall hold in confidence all business or technical information obtained from the Client, or its affiliates, provided that they are identified in writing by the Client as "confidential" at the time they are given to GSI or generated in the performance of its Services or Work.

GSI shall not disclose such information without the Client's consent except to the extent required for: 1) Performance of Services or Work under this Agreement; 2) Compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) Compliance with any court order, other governmental directive, or other compulsory process such as a subpoena; and/or 4) Protection of GSI against claims or liabilities arising from performance of Services or Work under this Agreement. These obligations shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

### SECTION 10: Testing and Observation

Client acknowledges that testing and observation are discrete procedures, are not continuous or exhaustive, and are being conducted to reduce the Client's risks; however, they cannot eliminate them. Therefore, these procedures indicate the conditions only at the locations, depths and times they were performed. But, in performing any of its Services or Work, GSI will not be responsible for:

- the quality and completeness of the Client or Client's contractor's work, as the case may be,
- Client's or Client's contractor's work adhering to the project documents,
- defects discovered in the Client's or Client's contractor's work,
- supervising or directing the work performed by Client or Client's contractor, and
- Client's or Client's contractor's means and methods.

Likewise, Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by GSI and that the data, interpretations, and recommendations of GSI are based solely upon the data available to GSI. GSI will be responsible for its data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

### SECTION 11: Warranties

GSI warrants that the professional services performed under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in this geographic area. For its technical services under this Agreement, GSI warrants they will be performed in a workmanlike manner. **No other warranties, express or implied, are made or intended by the proposal for the Services, or Work, or by furnishing oral or written reports of the findings made.**

### SECTION 12: Limitation of Liability

GSI's total aggregate liability to Client and all third parties, including all construction contractors and subcontractors at the site, arising out of its performance, or breach of this Agreement, shall not exceed \$50,000 or GSI's total fee for the Services or Work performed under this Agreement, whichever is greater. Notwithstanding any other provision of this Agreement to the contrary, GSI shall have no liability to the Client for contingent, consequential or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility downtime; or other similar business interruption losses, however they may be caused. The limitations and exclusions of liability set forth in this Section shall apply regardless of the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of GSI, its employees, consultants, or subcontractors.

### SECTION 13: Insurance

GSI represents that it and its staff are protected by worker's compensation insurance. GSI has coverage under public liability and property insurance policies which GSI deems to be adequate. It is the policy of GSI to require certificates of insurance from all subconsultants or subcontractors employed by GSI. Certificates for all such policies of insurance will be provided to Client upon request in writing. Client also agrees to protect its employees by worker's compensation insurance, including waiving its rights against GSI for any claims for injuries to its employees.

### SECTION 14: Termination and Suspension

This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform according to the terms of this Agreement. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. Client may elect to suspend GSI's Services upon written notice. In the event of termination or suspension, GSI shall be paid for Services or Work performed to the effective date of termination or suspension plus reasonable termination or suspension expenses. These expenses shall include all direct costs of GSI required to complete analyses and records necessary to complete its files and may also include a report of the Services or Work performed to the effective date of termination or suspension.

### SECTION 15: Indemnity

Subject to the other terms of this Agreement, GSI agrees to indemnify and hold Client harmless from third party property damages and bodily injury to the extent they are proximately caused by GSI's negligence in performing its Services or Work.

Since GSI's compensation under this Agreement is not commensurate with the potential risk of injury or loss that may be caused by exposures to Hazardous Materials or other dangerous substances or conditions, the Client waives any claim against GSI and agrees, to the extent enforceable, to defend, indemnify and save GSI, its employees and subconsultants or subcontractors harmless from any claim, liability, defense costs, attorney fees or expert witness fees for injuries or losses sustained by any party from such exposures allegedly arising out of GSI's performance of its Services and Work.

### SECTION 16: Dispute Resolution Procedures

If a dispute arises out of this Agreement that does not involve termination or suspension, the parties will endeavor to settle it by direct discussions between their authorized representatives. If they are not able to resolve the dispute, the parties will endeavor to settle the dispute by mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association. If the dispute cannot be settled by mediation within 60 days of its request, either party may take whatever action allowed by law. Unless otherwise agreed in writing by the parties, GSI will continue to perform its Services or Work and Client will continue to make payment per the terms of this Agreement during these dispute proceedings.

### SECTION 17: Safety and Restoration

GSI is solely responsible for the health and safety of its employees, and disclaims any responsibility or authority over the safety of any third parties engaged in the performance of any work for the Client at the site. Therefore, GSI will provide its employees all personal protective clothing and equipment that is required to perform their services or work safely and according to all applicable local, state and federal laws and regulations.

While GSI will take all reasonable precautions to minimize any property damage at the site, Client understands that in the normal course of GSI performing its Services or Work, some property damage may occur. Therefore, Client waives any such claims against GSI.



## GENERAL CONDITIONS

### **SECTION 18: Miscellaneous Provisions**

Neither party may assign its interest in this Agreement without the written consent of the other party. This Agreement is for the exclusive benefit of Client and GSI and not for the benefit of any third party except to the extent specifically provided in this Agreement.

These general conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding GSI's Services or Work. This Agreement represents the entire agreement between the parties and supersedes all prior written or oral negotiations. If any provision of this Agreement is found to be unenforceable, that provision will be deemed stricken and reformed to comply with the law.

If it is necessary for GSI to retain counsel to enforce any provision of these general conditions, Client agrees to pay all attorney's fees and cost incurred by GSI. Client consents to the jurisdiction, law and venue of the location of the site where the Services or Work are performed or GSI's offices, if the Services or Work is exclusively performed there.

Neither the Client nor GSI will be liable to the other for any special, consequential, incidental or penal losses or damages including, but not limited to, losses, damages or claims related to the unavailability of properties or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

The parties' rights and remedies regarding this Agreement, whether in contract, tort or otherwise, shall be exclusively those expressly set forth in this Agreement. The waiver of any term or breach of this Agreement by either party will not operate as a subsequent waiver of the same term or breach.

**This Agreement reflects the entire Agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is found to be void or voidable, such portion will be deemed stricken and the Agreement reformed to approximate the stricken portions as closely as the law allows.**

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***END OF GENERAL CONDITIONS***

# Important Information about This Geotechnical Engineering Proposal

*Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.*

*While you cannot eliminate all such risks, you can manage them. The following information is provided to help.*

## **Participate in Development of the Subsurface Exploration Plan**

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

## **Expect the Unexpected**

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did

whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

## **Have Realistic Expectations; Apply Appropriate Preventives**

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation is an offer to better manage your risk.* Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not

have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

### **Realize That Geoenvironmental Issues Have Not Been Covered**

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

### **Obtain Professional Assistance To Deal with Mold**

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project **is not** a mold prevention consultant; **none of the services being offered have been designed or proposed for the purpose of mold prevention.**

### **Have the Geotechnical Engineer Work with Other Design Professionals and Constructors**

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by hav-

ing your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

### **Read Responsibility Provisions Closely**

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal's provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

### **Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance**

Membership in ASFE/The Best People on Earth exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with an ASFE member geotechnical engineer for more information. Confirm a firm's membership in ASFE by contacting ASFE directly or at its website.



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