

Agenda

1. Call to Order
2. Public Hearing concerning the intent of the Board to sell voter-approved bonds in the amount of \$23,500,000 to alter, repair and equip the Junior/Senior High School Building, including creating new classrooms, gym and other instructional spaces, renovating the J.V. Kirby Pretzel Dome, improving heating, cooling and ventilation systems, installing school safety and security improvements, removing asbestos and making site improvements
3. Public hearing concerning the intent of the Board to sell alternate revenue bonds in the amount of \$9,000,000 for the purpose of altering, repairing and equipping the Junior/Senior High School Building, including creating new classrooms, gym and other instructional spaces, renovating the J.V. Kirby Pretzel Dome, improving heating, cooling and ventilation systems, installing school safety and security improvements, removing asbestos and making site improvements.
4. Public Comment (*Policy 2:230*)
5. Adjustments to Agenda
6. Approve Business Department Curriculum Purchase
7. Approve the Resolution to engage Giffin, Winning, Cohen and Bodewes P.C. Attorneys at Law, as Legal Counsel for Country Mutual matter
8. Discuss/Approve Business Associate Agreement with Lincoln Prairie Behavioral Health Center
9. Approve Resolution to Sell/Dispose of Surplus or Outdated Equipment/Supplies
10. Approve Board Member Reimbursement-Josh Beard
11. Approve the Teacher Handbook for the 22-23 School Year
12. Approve the Support Staff Handbook for the 22-23 School Year
13. Discuss/Approve Contract with CORE Construction Services of Illinois, Inc. as Construction Manager
14. Executive Session - For the purpose of:
 - 14.a. *The appointment, employment compensation, discipline, performance, or dismissal of specific employees of the District or legal counsel for the District, including hearing testimony on a complaint lodged against an employee or against legal counsel for the District to determine validity. 5 ILCS 10/2(c).*
15. Personnel Consent Agenda
 - 15.a. Alexa Thomsen as NBE Paraprofessional
 - 15.b. Breann Burt as Volunteer Assistant Junior High School Softball Coach
16. Adjournment



Ms. Hattie Llewellyn
Principal
New Berlin CUSD 16
600 N Cedar St
New Berlin, IL 62670-4608
United States

Quote Number: 201451-2
Quote Creation Date: 07-29-2022
Quote Expiration Date: 09-30-2022
Quote Release: 2

Learning Microsoft Office 2016 Levels 1
Price Quote Summary

Solution	Base Amount	Total
Learning Microsoft Office 2016, Level 1	\$ 2,077.81	\$ 2,077.81
Solution Subtotal	\$ 2,077.81	\$ 2,077.81
	Shipping & Handling	\$ 166.22
		Total
		\$ 2,244.03

Price Quote Detail

ISBN	Description	Price	Charged Qty	Total Charged
Learning Microsoft Office 2016, Level 1				
Learning Microsoft Office 2016, Level 1				
9780134849614	LEARNING MICROSOFT OFFC 16 LV1&LV 1 LRNG PKG	\$109.99	18	\$1,979.82
9780134554648	TEACHER'S WRAPAROUND EDITION FOR LEARNING MICROSOFT OFFICE 2016 LEVEL 1 -- NATIONAL	\$97.99	1	\$97.99
Learning Microsoft Office 2016, Level 1 Subtotal				\$ 2,077.81
Learning Microsoft Office 2016, Level 1 Subtotal				\$ 2,077.81
Solution Subtotal				\$ 2,077.81
Shipping and Handling				\$ 166.22
Total				\$ 2,244.03

Savvas Learning Company LLC Terms and Conditions

To place your order please submit a copy of this price quote with your Purchase Order, include the Quote Number on your Purchase Order, and include any other required documentation. You may send the order documents using an electronic form or by mail. Please submit your PO and price via one of the following methods:

e-Form: <http://support.savvas.com/support/s/contactsupport>

Mail: PO Box 6820, Chandler, AZ 85246

Savvas does not accept Credit Card information via postal mail, facsimile, or email. Credit Card information will only be accepted via phone, eCommerce, or OASIS.

For questions regarding your order please call Customer Service: 1-800-848-9500.

Price quote: This is a price quote for the customer's convenience only, and not an offer to contract. All quotes are subject to review and final acceptance by an authorized representative of Savvas at its offices. Savvas reserves the right to correct typographical, computational or other errors. Savvas' standard terms are net 30 days unless otherwise specified. All pricing is in US Dollars unless otherwise specified. Pricing calculations use multiple decimal places to determine the most accurate extended pricing but are represented in standard currency format. The breakdown of the fees set forth in this quotation is considered Savvas proprietary information and not subject to disclosure by the customer.

Shipping & handling charges (where applicable) are shown on the quote. S&H rates quoted are for standard ground transportation and may not reflect account contracted rates. If expedited shipping is requested, actual charges may be higher. For orders picked up at the Savvas warehouse by the customer or a third party carrier contracted by the customer, a 2% handling charge will be applied to shippable items. The 2% charge will show up on the customer proposal and invoice as a S&H charge.

Taxes: All pricing in this quote is exclusive of any applicable sales, use or other similar taxes or duties. The customer is responsible for any such taxes or duties that may apply; if the customer is tax exempt, evidence of such tax exemption must be provided. Estimated tax may be provided solely for customer convenience. The amount indicated is only an estimate and is intended to be helpful for budgeting purposes. The actual amount of sales tax assessed at the time of invoicing may be more or less.

Platforms: Savvas, and any third party for which Savvas serves as the sales agent or distributor, reserve the right to change and/or update technology platforms, including possible edition updates to customers during the term of access. Customers will be notified of any change prior to the beginning of the new school year.

Return Policy: If you are not entirely satisfied with any of our products, then you may, within six months from the date of purchase, return all materials still in new, unused, salable condition for a full refund, credit, or replacement. All returned materials must be shipped back to Savvas within 30 days of receiving the Return Materials Authorization. All materials sold in a set or a package must be returned complete as originally sold. Materials that were provided gratis must be returned proportionate to the purchased items being returned for refund or credit.

Consumable Worktexts: Subsequent year consumable worktexts will ship each year on the order date of the original order for the duration of their license. Worktexts will ship to the location listed on the original order. Quantities for each grade level and title will remain consistent each year. Changes to quantities of titles previously ordered, shipping location changes, or any other changes to consumable worktext shipments must be made 4 weeks prior to the original order date. Changes should be made using the e-form: <https://worktext-subscriptions.savvas.com/>.

Annual subscriptions for iLit and Successmaker: Products automatically renew on the anniversary date of the original purchase and will be invoiced accordingly unless otherwise specified. If you wish to cancel, please let us know in writing prior to the date of renewal by completing the customer service request form which you can access here: <https://support.savvas.com/support/s/customer-service-support-form>.

Technical support services are included with purchase of Savvas digital products eform: <https://support.savvas.com/support/s/k12-curriculum-support-form> phone: 1-800-848-9500

Professional Services: All paid services must be scheduled and delivered within twelve (12) months of the order date of those services. Any unused services expire at the end of such twelve (12) month period, unless otherwise specified in contract terms. MySavvasTraining, which provides online access to on-demand tutorials and interactive webinar sessions, is included with purchase of products (mySavvasTraining.com).



SCHOOL PURCHASE ORDER

New Berlin Community Unit School District #16

600 N Cedar
New Berlin, IL 62670
[Phone] (217)488-2040
[Fax] (217)488-2043

P.O. NO. 3012023024
P.O. DESCRIPTION Business Texts
DATE 7.28.22

To: McGraw Hill
PO Box 182605
Columbus OH 43218
orders_mhe@mheducation.com
Fax# _____

Ship To: New Berlin High School

Attn: Alex Kruckeberg
Budget Description: Kruckeberg Textbooks
Budget# _____

Do You Want the District Office to Fax PO (Check One) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Do You Want to pick up the items yourself (Check One) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

QTY	ITEM #	DESCRIPTION	UNIT PRICE	LINE TOTAL
		See Detailed Proposal Attached		


CREDIT CARD <input type="checkbox"/> Yes <input type="checkbox"/> No	SUBTOTAL	\$ 4,861.74
REQUESTED / ISSUED? (CHECK ONE)	SHIPPING	313.21
NAME ON CREDIT CARD:	TOTAL	\$ 5,174.95

Bill To: **Community Unit School Dist #16**
Business Office
600 N Cedar
New Berlin, IL 62670

Sales Tax Exemption #: E9993-3543-06

Employee Signature

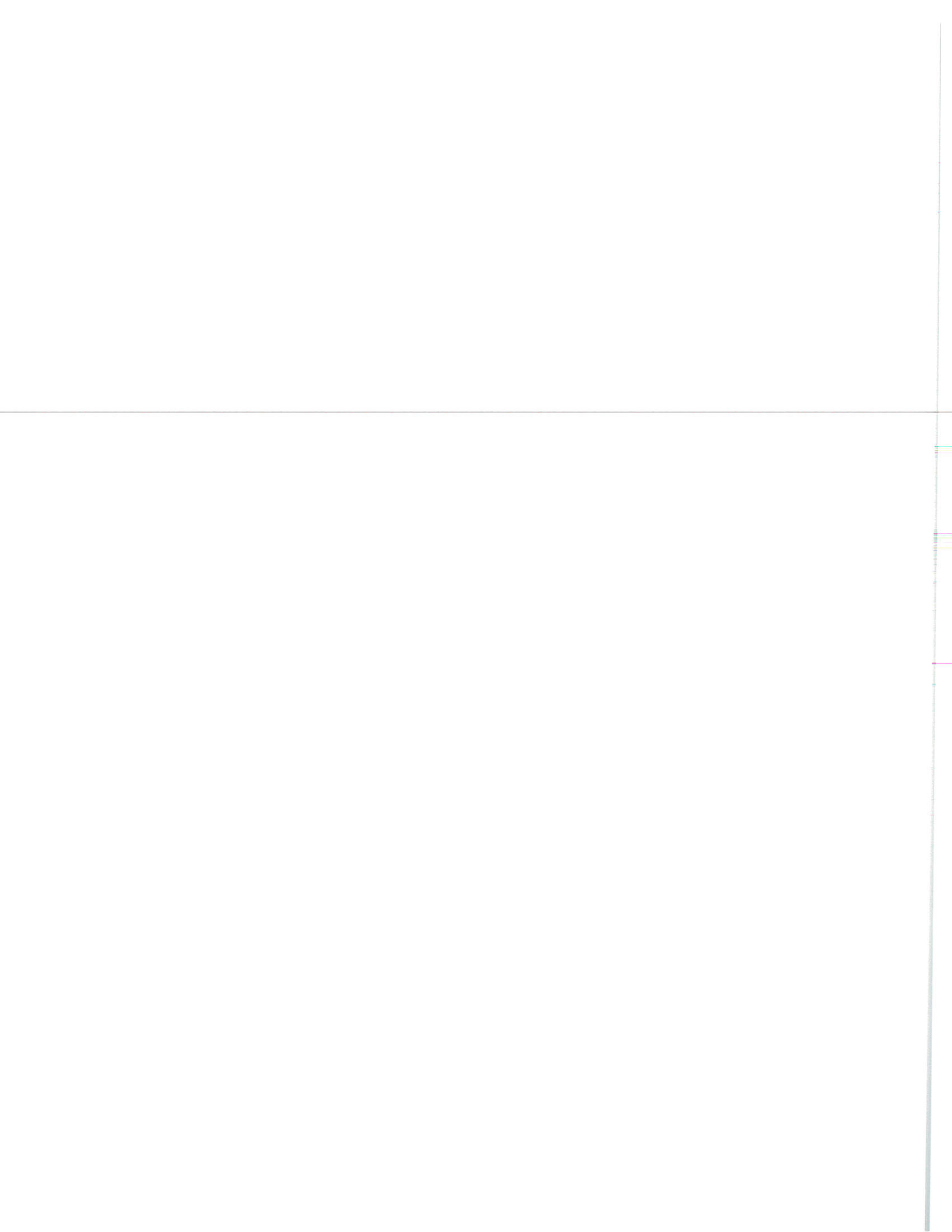
7.28.22
Date



Supervisor Signature

7.28.22
Date

If this form is not signed by a supervisor above, New Berlin CUSD 16 reserves the right to cancel and/or return any order that was not properly authorized in exchange for a full refund.





Because learning changes everything.®

ORDER FORM FOR:
New Berlin High School
300 ELLIS STREET
NEW BERLIN, IL 62670
ACCOUNT NUMBER: 234753

CONTACT:
Hattie Llewellyn
hllewellyn@pretzelpride.com
(217) 488-6012

SUBSCRIPTION/DIGITAL CONTACT:
Hattie Llewellyn
hllewellyn@pretzelpride.com
(217) 488-6012

SALES REP INFORMATION:
Shannon Howard
shannon.howard@mheducation.com

Section Summary		Product Subtotal
CTE: BUSINESS		\$0.00
GL ACCOUNTING (2016)		\$1,441.53
GL INTRO to BUSINESS (2016)		\$3,420.21
PRODUCT TOTAL *		\$4,861.74
ESTIMATED S&H**		\$313.21
ESTIMATED TAX**		\$0.00
GRAND TOTAL *		\$5,174.95

* Price firm for 45 days from quote date. Price quote must be attached to school purchase order to receive the quoted price and free materials.

**Shipping and handling charges shown are only estimates. Actual shipping and handling charges will be applied at time of order. Taxes shown are only estimates. If applicable, actual tax charges will be applied at time of order.

Comments:

PLEASE INCLUDE THIS PROPOSAL WITH YOUR PURCHASE ORDER

SEND ORDER TO:

McGraw Hill LLC | PO Box 182605 | Columbus, OH 43218-2605
 Email: orders_mhe@mheeducation.com | Phone: 1-800-338-3987 | Fax: 1-800-953-8691

QUOTE DATE: 07/26/2022
 QUOTE NUMBER: DCONO-07262022-006

ACCOUNT NAME: New Berlin High School
 ACCOUNT #: 234753

EXPIRATION DATE: 09/09/2022
 PAGE #: 1



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Product Description	ISBN	Qty	Unit Price	Line Subtotal
CTE: BUSINESS				
CTE: BUSINESS Subtotal: \$0.00				
GL ACCOUNTING (2016)				
MHE HIGH SCHOOL COLL ACCTG CH 1-30	978-1-26-421277-4	18	\$72.90	\$1,312.20
ACCOUNTING TEACHER EDITION	978-0-02-140092-8	1	\$129.33	\$129.33
GL ACCOUNTING (2016) Subtotal: \$1,441.53				
GL INTRO to BUSINESS (2016)				
INTRODUCTION TO BUSINESS STUDENT EDITION	978-0-02-140045-4	35	\$93.81	\$3,283.35
INTRODUCTION TO BUSINESS TEACHER EDITION	978-0-02-140046-1	1	\$136.86	\$136.86
GL INTRO to BUSINESS (2016) Subtotal: \$3,420.21				

SEND ORDER TO:

McGraw Hill LLC | PO Box 182605 | Columbus, OH 43218-2605
Email: orders_mhe@mheducation.com | Phone: 1-800-338-3987 | Fax: 1-800-953-8691

QUOTE DATE:

07/26/2022

QUOTE NUMBER:

DCONO-07262022-006



ACCOUNT NAME: New Berlin High School

ACCOUNT #: 234753

EXPIRATION DATE:

09/09/2022

PAGE #:

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Because learning changes everything.®

ORDER FORM FOR:

New Berlin High School
300 ELLIS STREET

NEW BERLIN, IL 62670
ACCOUNT NUMBER: 234753

CONTACT:

Hattie Lewellyn
hlewellyn@pretzelpride.com
(217) 488-6012

PRODUCT TOTAL*	\$4,861.74
ESTIMATED SHIPPING & HANDLING**	\$313.21
ESTIMATED TAX**	\$0.00
GRAND TOTAL	\$5,174.95

SUBSCRIPTION/DIGITAL CONTACT:

Hattie Lewellyn
hlewellyn@pretzelpride.com
(217) 488-6012

Comments:

* Price firm for 45 days from quote date. Price quote must be attached to school purchase order to receive the quoted price and free materials.

**Shipping and handling charges shown are only estimates. Actual shipping and handling charges will be applied at time of order. Taxes shown are only estimates. If applicable, actual tax charges will be applied at time of order.

Terms of Service:

By placing an order for digital products (the 'Subscribed Materials'), the entity that this price quote has been prepared for ('Subscriber') agrees to be bound by the Terms of Service and any specific provisions required by Subscriber's state law, each located in the applicable links below. Subject to Subscriber's payment of the fees set out above, McGraw Hill LLC hereby grants to Subscriber a non-exclusive, non-transferable license to allow only the number of Authorized Users that corresponds to the quantity of Subscribed Materials set forth above to access and use the Subscribed Materials under the terms described in the Terms of Service and any specific provisions required by Subscriber's state law, each located in the applicable links below. The subscription term for the Subscribed Materials shall be as set forth in the Product Description above. If no subscription term is specified, the initial term shall be one (1) year from the date of this price quote (the 'Initial Subscription Term'), and thereafter the Subscriber shall renew for additional one (1) year terms (each a 'Subscription Renewal Term'), provided MHE has chosen to renew the subscription and has sent an invoice for such Subscription Renewal Term to Subscriber.

Terms Of Service

Provisions required by Subscriber State law

ATTENTION: In our effort to protect our customer's data, we will no longer store credit card data in any manner within our system. Therefore, as of April 30, 2016 we will no longer accept credit card orders via email, fax, or mail/package delivery. Credit card orders may be placed over the phone by calling the number listed above or via our websites by visiting www.mheducation.com (or www.mhcoast2coast.com).

3012023024

School Purchase Order Number:

Hattie N. Lewellyn

Name of School Official (Please Print)



Signature of School Official

PLEASE INCLUDE THIS PROPOSAL WITH YOUR PURCHASE ORDER

SEND ORDER TO:

McGraw Hill LLC | PO Box 182605 | Columbus, OH 43218-2605
Email: orders_mhe@mheducation.com | Phone: 1-800-338-3987 | Fax: 1-800-953-8691

QUOTE DATE:

07/26/2022

QUOTE NUMBER:

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EXPIRATION DATE:

09/09/2022

PAGE #:

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RESOLUTION TO ENGAGE GIFFIN, WINNING, COHEN & BODEWES, P.C.

WHEREAS, the New Berlin CUSD #16 Board of Education (herein "Board of Education") is a party to litigation with Country Mutual Insurance Company and Michelle Stolleis Forbes, known as Sangamon County Case No. 2019-MR-526.

WHEREAS, the Board of Education would like to engage Giffin, Winning, Cohen & Bodewes, P.C. to act as legal counsel in the above-referenced matter in lieu of its current counsel Statham & Long.

NOW, THEREFORE, BE IT RESOLVED that the Board of Education:

1. Approves of the August 2, 2022 Letter of Representation with Giffin, Winning, Cohen & Bodewes, P.C. attached hereto and incorporated by reference as **Exhibit A**; and
2. Directs the Superintendent to execute the Letter of Representation.

Adopted this 4th of August, 2022, by the following roll-call vote:

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

President

Secretary



GIFFIN WINNING
COHEN & BODEWES, P.C.
ATTORNEYS AT LAW

ESTABLISHED 1911

TELEPHONE (217) 525-1571

www.gwcbllaw.com

August 2, 2022

Samantha A. Bobor
Attorney
SBobor@gwcbllaw.com

EXHIBIT A
DAVID A. HERMAN
CREIGHTON R. CASTLE
CHRISTOPHER E. SHERER
MATTHEW R. TRAPP
JASON E. BROKAW
JOHN M. GABALA

SAMANTHA A. BOBOR
JACKSON B. FREDMAN
JASON R. VINCENT

Of Counsel:
JOHN L. SWARTZ
R. MARK MIFFLIN
HERMAN G. BODEWES

New Berlin Community School District #16
c/o Superintendent Jill Larson
600 Cedar Street
New Berlin, IL 62670

Re: New Berlin Community Unit School District #16 Letter of Representation
Our File No. BOARD OF EDUCATION-2209
Country Mutual Insurance Company vs. New Berlin Community School
District No. 16 and Michelle Stolleis Forbes
Sangamon County Case No. 2019-MR-526

Dear Mrs. Larson:

Thank you for giving us the opportunity to provide legal services for New Berlin Community Unit School District #16. This letter sets forth the terms and conditions under which this law firm will undertake representation of the Board of Education of New Berlin Community Unit School District #16 ("BOARD OF EDUCATION") to perform legal services in the above-referenced litigation matter. In this regard, you authorize us to represent BOARD OF EDUCATION to preserve or enforce its rights in this matter.

Our fee will be computed at a rate of \$200.00 per hour for partners of the firm, \$150.00 per hour for associates of the firm, and \$90.00 for paralegals of the firm.

Time will be recorded by our attorneys and paralegals in tenths of an hour. The time actually expended by the law firm will be billed to BOARD OF EDUCATION at the rates specified at the above address. The hourly rate will be fixed until January 1 of the following year. The firm's hourly billing rate is increased or adjusted every January 1 for all existing clients of the firm. BOARD OF EDUCATION agrees to pay all hourly fees as so adjusted from time to time.

Our firm will bill BOARD OF EDUCATION monthly. In addition, BOARD OF EDUCATION will be responsible for any and all costs, fees, disbursements, costs or other charges actually paid or incurred by the firm in the course of representation, regardless of the outcome of the matter. Examples of these expenses and costs would include but are not limited to amounts paid by the law firm for expenses of filing fees, depositions, copying costs, long distance telephone

SPRINGFIELD OFFICE
900 COMMUNITY DRIVE
SPRINGFIELD, IL 62703
(217) 525-1571

D. Logan Giffin (1890-1980)
Montgomery S. Winning (1892-1966)
C. Terry Lindner (1903-1987)
Alfred F. Newkirk (1904-1980)
James M. Winning (1921-2013)
Robert S. Cohen

HILLSBORO OFFICE
434 SOUTH MAIN STREET
HILLSBORO, IL 62049
(217) 532-5678

charges, witness testimony, witness review of file, travel expenses, telefax expenses and any other such expenses which the firm may pay on behalf of BOARD OF EDUCATION. If the amount of a single cost, fee, disbursement, or other charge to be incurred is five hundred dollars (\$500.00) or more, BOARD OF EDUCATION shall be responsible for paying those expenses directly. The firm will not pay these expenses on behalf of BOARD OF EDUCATION. The firm will not obligate BOARD OF EDUCATION for any expenses of five hundred dollars (\$500.00) or more without BOARD OF EDUCATION's prior approval. If the amount of a single cost, fee, disbursement, or other charges to be incurred is less than five hundred dollars (\$500.00), the firm will pay these expenses on behalf of BOARD OF EDUCATION and the amounts paid on behalf of BOARD OF EDUCATION by the firm will be itemized on its bill. The time expended by the attorneys and paralegals of the firm will also be itemized its bill. All billings for either fees or costs and expenses must be paid within 30 days of the date of mailing or emailing.

If any billing is not paid as provided herein, the law firm may, at its option, discontinue representation of BOARD OF EDUCATION pursuant to and in compliance with the Illinois Rule of Professional Conduct 1.16. In addition, if BOARD OF EDUCATION fails to respond to our communications in a timely manner, and/or because of difficulty in communications we believe that representation of BOARD OF EDUCATION is being jeopardized, we may also elect to terminate our representation, pursuant to and in compliance with the Illinois Rule of Professional Conduct 1.16.

We have the capacity to communicate using modern electronic systems, including but not limited to electronic mail (e-mail), cell phones, and text messaging. Conventional postal and telephonic communications are generally considered sufficiently secure for privileged communications. There have been questions raised concerning the adequacy of privacy protections in e-mail, cell phone, and internet based electronic communications systems from time to time. We are comfortable with electronic communications and the security of our own internal systems, but, we have no control over the servers and communications lines which may carry such electronic communications and data beyond the physical boundaries of our offices. Thus, we can make no representations concerning the adequacy of the protections such systems provide for the confidentiality of BOARD OF EDUCATION's communication with us. If BOARD OF EDUCATION consents, however, knowing that there are risks in conventional e-mail and electronic communications systems, we will be happy to communicate with it via those modes. Please always be aware, however, that the substance of what BOARD OF EDUCATION puts into such communications may be stored in facilities which are beyond our reach or control, and may be discoverable or compromised. If BOARD OF EDUCATION has concerns about the confidentiality of such communications, we will certainly limit our means of communication to traditional voice and printed modes. We are certainly willing to discuss the addition of other facilities, software and/or equipment which may provide a greater measure of protection. By executing this agreement BOARD OF EDUCATION is consenting to communicating with us using electronic communications.

BOARD OF EDUCATION authorizes the attorneys in the firm to engage, associate with or delegate work to co-counsel in their discretion when it is deemed necessary or advisable to

properly represent BOARD OF EDUCATION in connection with this matter. The rates charged by such co-counsel shall be the same as those charged by the originating attorney unless otherwise agreed. BOARD OF EDUCATION also authorizes the firm to employ individuals other than attorneys to assist in work on this matter on such terms and conditions as the firm deems necessary and appropriate as the total fees charged to BOARD OF EDUCATION are no greater than if the work were done entirely by the firm.

This law firm cannot guarantee success in any legal matter. This firm does, however, pledge to represent BOARD OF EDUCATION to the best of our professional ability within the Illinois Rules of Professional Conduct governing attorneys.

BOARD OF EDUCATION has, at all times, the right to terminate the services of this firm upon written notice to us. We will have the right to terminate our services of BOARD OF EDUCATION upon written request if BOARD OF EDUCATION fails to cooperate with reasonable requests of the firm, fail to pay fees as billed or the firm determines, in its reasonable discretion that continued representation of BOARD OF EDUCATION might violate the Illinois Rules of Professional Conduct governing attorneys.

This agreement shall be governed by the laws of Illinois and any action to enforce the terms of this agreement which we may bring may be brought in any state or federal court in any county in the State of Illinois. In the event that any action must be taken by an attorney to collect any amount due under the terms of this agreement, our law firm shall be permitted to recover reasonable attorney's fees for time used in enforcing the terms of this agreement.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which constitute one and the same document. Signatures by fax or electronic mail shall have the same force and effect as original signatures. Please sign and date the Agreement and return it within 10 days. We hope this Agreement helps BOARD OF EDUCATION understand the financial arrangement between us. The firm wants BOARD OF EDUCATION to be satisfied in all ways with its legal representation. If BOARD OF EDUCATION ever has questions, comments, or complaints about these terms, its billing, or any aspect of our representation, please let us know. Our practice grows through referral by satisfied clients. We want BOARD OF EDUCATION to be satisfied with our work for it. We will proceed in representing BOARD OF EDUCATION pursuant to the terms outlined above upon receipt of its signed acceptance in the space provided below.

We look forward to our representation of BOARD OF EDUCATION, and hope that our relationship with BOARD OF EDUCATION will be a lasting and successful one.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Samantha A. Bobor

SAB/pa

THIS IS A LEGALLY BINDING CONTRACT. BY SIGNING BELOW, YOU ARE ACKNOWLEDGING THAT YOU HAVE READ AND UNDERSTAND THE CONTENTS OF THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS.

ACCEPTED, the above and foregoing terms, this ____ day of _____, 2022.

New Berlin Community Unit School District #16

By: _____

Name: _____

Title: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) effective as of August 1, 2022 (“Effective Date”) is entered into by and between Board of Education of New Berlin CUSD 16 (“Business Associate”) and Lincoln Prairie Behavioral Health Center (“Covered Entity”).

RECITALS

The purpose of this Agreement is to enable the parties to comply with the applicable requirements of HIPAA, the HIPAA Regulations and the HITECH Act (defined below) that involve Protected Health Information (“PHI”) (including but not limited to Electronic Protected Health Information (“ePHI”)) that is accessed, maintained, transmitted, used, created, received or disclosed by Business Associate (and/or any agent or Subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate or Covered Entity) in connection with services performed on behalf of Covered Entity pursuant to any oral or written agreement(s) for the provision of services to Covered Entity that has been or may be entered into (“Services Agreement”).

NOW THEREFORE, the parties agree as follows.

DEFINITIONS

Terms used, but not defined below, shall have the meaning as set forth in HIPAA, the HIPAA Regulations, HITECH provisions of the American Recovery and Reinvestment Act of 2009 (“Stimulus Act”), Title XIII and related regulations.

“**Administrative Safeguards**” means safeguards consisting of administrative actions, policies and procedures designed to protect the privacy of PHI from intentional or unintentional use or disclosure in violation of HIPAA and other legal requirements, and to manage the selection, development, implementation, and maintenance of security measures to protect Electronic PHI, as well as managing the conduct of the workforce relating to the protection of that information.

“**Availability**” means the property that data or information is accessible and useable upon demand by an authorized person, as set forth at 45 C.F.R. § 164.304.

“**Breach**” means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. For the purposes of reporting to the Covered Entity under this Agreement, Business Associate shall presume that any unauthorized acquisition, access, use or disclosure of PHI is a “Breach.” A Breach excludes:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the Covered Entity or Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and such information is not further acquired, accessed, used or disclosed in a manner not permitted under HIPAA, the HIPAA Regulations, or HITECH;

(ii) Any inadvertent disclosure by a person who is authorized to access PHI at a facility operated by Covered Entity or Business Associate to another person authorized to access PHI at the same facility, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under HIPAA, the HIPAA Regulations, or HITECH; or

(iii) A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

“**Breach Notification Regulations**” means the rules set forth primarily at set forth primarily at 45 C.F.R. Part 164, Subpart D.

“Business Associate” means the entity so designated in the preamble to this Agreement.

“Confidentiality” means the property that data or information is not made available or disclosed to unauthorized persons or processes, as set forth at 45 C.F.R. § 164.304.

“Covered Entities” or **“Covered Entity”** means the entity or entities as designated in the preamble to this Agreement.

“Discovery” or **“Discovery of a Breach”** means that Business Associate, or an employee, officer or agent of Business Associate, has acquired actual knowledge of a Breach or by the exercise of reasonable diligence should have acquired knowledge of a Breach.

“Electronic Protected Health Information,” “Electronic PHI.” or **“ePHI”** means PHI in electronic form. All references to “Protected Health Information” or “PHI” in this Agreement include ePHI.

“Encrypted” or **“Encryption”** means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, as set forth at 45 C.F.R. § 164.304.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 Pub. L. No. 104-191.

“HIPAA Regulations” means the Privacy Regulations, the Security Regulations, the Breach Notification Regulations and such other applicable regulations set forth in 45 C.F.R. Parts 160 and 164.

“HITECH” or **“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act privacy and security provisions of the Stimulus Act and implementing regulations.

“Identifiers” means the identifiers listed in the HIPAA Privacy Rule at 45 C.F.R. Section 164.514(b)(2), which include, among other identifiers: name, address, zip code, all elements of dates other than the year that directly relating to an individual (such as birthdate, admission date, discharge date, date of death), telephone numbers, email address, fax numbers, social security numbers, medical record numbers, vehicle identifiers, license numbers, and all other identifiers of an individual, or of the individual’s relatives, employers, or household members described in Section 164.514(b)(2).

“Individual” means the person who is the subject of PHI and shall include a person who qualifies as a personal representative under 45 C.F.R. Section 164.502(g).

“Integrity” means the property that data or information have not been altered or destroyed in an unauthorized manner, and that data from one system is consistently and accurately transferred to other systems, as set forth at 45 C.F.R. § 164.304.

“Part 2” means the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations set forth at 42 USC §290dd-2 and 42 CFR Part 2.

“Physical Safeguards” means safeguards consisting of physical measures, policies, and procedures to protect electronic information systems and related buildings and equipment, from natural and environmental hazards and unauthorized intrusion.

“Protected Health Information” or **“PHI”** means individually identifiable health information created, maintained, transmitted or received by Business Associate from or on behalf of a Covered Entity that relates to the past, present, or future physical or mental health or condition of an Individual, the provision of health care to an Individual, or the past, present, or future payment for the provision of health care to an Individual, as set forth at 45 C.F.R. § 160.103. PHI can be oral, written, electronic, or recorded in any other form. All references to “Protected Health Information” or “PHI” in this Agreement include Electronic Protected Health Information (ePHI).

“Privacy Regulations” means the rules set forth primarily at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“Qualified Service Organization” or **“QSO”** means a person or entity that provides services to a Part 2 program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, accounting, population health management, medical staffing, or other professional services, or services to

prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy and has entered into an agreement with a Part 2 program.

“Required by Law” means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law, as set forth at 45 C.F.R. § 164.103. Required by Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

“Secretary” or **“HHS Secretary”** means the Secretary of the Department of Health and Human Services (“HHS”).

“Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as set forth at 45 C.F.R. § 164.304. The term “Security Incident” is very broad and includes attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

“Security Measures” relates to the means (process and technology) by which a Covered Entity and/or Business Associate protect the privacy and security of information, as set forth at 45 C.F.R. § 164.304. Security Measures keep information secured, and decrease the means of tampering, destruction, or inappropriate access. Security Measures encompass all of the administrative, physical, and technical safeguards in an information system.

“Security Regulations” means the rules set forth primarily at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

“Subcontractor” means a person or entity to whom the Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of the Business Associate, whether by written agreement or otherwise.

“Technical Safeguards” means safeguards consisting of technology and the policy and procedures for the use of the technology that protect ePHI and control access.

“Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued under section 13402(h)(2) of HITECH on the HHS Web site.

1. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1.1 Business Associate agrees not to use or disclose PHI (“PHI”) except as permitted or required by this Agreement or as Required by Law. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

1.2 Business Associate and its agents or Subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in accordance with HIPAA, the HIPAA Regulations and HITECH.

1.3 Business Associate agrees to use appropriate safeguards and comply with the applicable requirements of the HIPAA Regulations, including 45 CFR Subpart C with respect to ePHI and Subpart E of 45 CFR with respect to PHI. This shall include, without limitation, using appropriate Security Measures and developing, implementing, maintaining and using appropriate and reasonable Administrative, Physical, and Technical Safeguards for the privacy and security of PHI to ensure the Integrity, Confidentiality and Availability of, and to prevent non-permitted uses and disclosures of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate further acknowledges and agrees that pursuant to HITECH it will implement and document its Security Measures and will comply with 45 C.F.R. sections

164.306 (Security Standards), 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Safeguards), and 164.316 (Policy and Procedures and documentation requirements), and all other applicable requirements of HIPAA, the HIPAA Regulations, HITECH and other applicable privacy and security laws. Business Associate agrees to adopt the technology and methodology standards provided in guidance issued by the HHS Secretary pursuant to HITECH.

1.4 Business Associate agrees to take prompt action to correct any deficiencies and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an access, use, disclosure, modification or destruction of PHI by Business Associate, its agents or Subcontractors, if any, in violation of the requirements of this Agreement.

1.5 Business Associate agrees to promptly notify Covered Entity within forty-eight (48) hours of any access, use, disclosure, modification or destruction of PHI not provided for by this Agreement or that is in violation of the requirements of this Agreement, and to provide Covered Entity or its designee such information as may be reasonably requested by Covered Entity to investigate the violation. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. If Business Associate has been requested orally or in writing by law enforcement officials that notification of affected Individuals of a Breach may impede a criminal investigation, Business Associate shall so inform Covered Entity. In the event of a Breach of PHI caused by Business Associate or anyone acting on its behalf, Business Associate shall be responsible for all costs and expenses of responding to the Breach, including without limitation, the costs of notifying Individuals of the Breach. Nothing in this section shall limit any other rights or remedies of Covered Entity.

1.6 Business Associate further agrees to provide a report in writing to Covered Entity within ten (10) days of, and to cooperate with Covered Entity in investigating and resolving, any of the following as they relate to PHI under this Agreement:

- (i) Any unauthorized access, use, disclosure, modification or destruction of PHI of which Business Associate becomes aware;
- (ii) Any Security Incident of which Business Associate becomes aware; or
- (iii) Any Breach or potential Breach of Unsecured PHI of which Business Associate becomes aware. In such event, Business Associate will document its investigation and provide such additional information as may reasonably be requested to enable Covered Entity to determine the extent to which the PHI has been compromised. Notice to affected Individuals will be made by or at the direction of Covered Entity at Business Associate's expense.

The written report from Business Associate required by this Section shall set forth the following:

- (i) A brief description of what happened, including the date of any unauthorized access, use, disclosure, modification or destruction, and, if known, the date of Discovery, the number of individuals affected, the time period involved, and the nature and extent of any harm resulting from the violation;
- (ii) A description of the type(s) of PHI and Identifiers involved (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, and other types of information were involved);
- (iii) Information regarding whether and to what extent the PHI was Unsecured PHI, Encrypted, or was rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued under section 13402(h)(2) of HITECH on the HHS Web site;
- (iv) A description of the manner in which the PHI could be identified or, if known, how and whether the PHI could be re-identified;
- (v) To the extent possible, the name of each Individual whose PHI has been, or is reasonably believed to have been accessed, used, disclosed, modified or destroyed;

- (vi) To the extent possible, the name of the unauthorized person and entity who used the PHI or to whom the disclosure was made;
- (vii) To the extent possible, whether the unauthorized person or entity is another covered entity, business associate, employee of Business Associate, Subcontractor or entity affiliated with Business Associate;
- (viii) Whether any opportunity existed for an unauthorized person to acquire, view, transfer or otherwise compromise the PHI;
- (ix) Whether the PHI was actually acquired, viewed, transferred or otherwise compromised by an unauthorized person;
- (x) Any steps Individuals should take to protect themselves from potential harm resulting from the unauthorized access, use, disclosure, modification or destruction of PHI; and
- (xi) A description of what the Business Associate is doing to investigate, mitigate harm to Individuals, and protect against any further unauthorized access, use, disclosure, modification or destruction of PHI.

1.7 Business Associate agrees that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate or Covered Entity will enter into in an enforceable written HIPAA-compliant business associate agreement requiring that the Subcontractor:

(a) agrees to comply with the HIPAA Privacy Regulations, HIPAA Security Regulations, HITECH law, and other applicable state, Federal and local laws and regulations related to privacy and security of PHI, including ePHI;

(b) agrees to the same restrictions, reporting and contracting obligations, and conditions that apply in this Agreement to Business Associate with respect to PHI including, by way of example and without limitation, that the Subcontractor develop, implement, maintain and use appropriate and reasonable Security Measures and Administrative, Physical, and Technical Safeguards for the privacy and security of PHI to ensure the Integrity, Confidentiality and Availability of, and prevent non-permitted access, use, disclosure, modification or destruction of PHI, including ePHI; that the Subcontractor enter into business associate agreements with its subcontractors that create, receive, maintain or transmit PHI on behalf of Subcontractor, Business Associate or Covered Entity; and that the Subcontractor adopt a HIPAA compliance program and policies and procedures.

If Business Associate becomes aware of a pattern of activity or practice of a Subcontractor that constitutes a material breach of their written business associate agreement, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract.

1.8 Business Associate shall provide notice within ten (10) days of the receipt of a request from an Individual (or their authorized personal representative) for access to, amendment to, an accounting of disclosures of, a copy or electronic copy of, or a restriction on the use or disclosure of PHI.

1.9 Business Associate agrees to provide access to and copies of PHI maintained in a Designated Record Set to Covered Entity or, when requested in writing by Covered Entity, to an Individual in order for Covered entity to meet the requirements of 45 C.F.R. §164.524. Business Associate shall provide access to and copies of PHI in a reasonable time, not to exceed fifteen (15) days (unless the parties reasonably agree otherwise in writing) and in a reasonable manner. If requested by Covered Entity or an Individual, Business Associate shall provide access to ePHI to Covered Entity or, when requested in writing by Covered Entity, to an Individual in the electronic form and format requested by Covered Entity or by the Individual, as applicable, if it is readily producible and, if not, in a readable electronic form and format as agreed by the Covered Entity or Individual, as applicable.

1.10 Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate, on behalf of Covered Entity available to the Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary determining compliance with the HIPAA Regulations. Upon receipt of a request from the

Secretary, Business Associate shall notify Covered Entity in writing unless such notification would be contrary to law.

1.11 Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity determines is required to enable Covered Entity to comply with 45 C.F.R. §164.526. Except for good cause shown in writing to Covered Entity, Business Associate shall act upon Covered Entity's request for an amendment within thirty (30) days of receipt Covered Entity's request.

1.12 Business Associate agrees to identify, track and document disclosures of PHI and other information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate agrees to provide the information collected to Covered Entity or to an Individual when requested by Covered Entity, in writing and not later than thirty (30) days after receiving a request under this subsection, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Upon written request, Business Associate shall furnish to Covered Entity a copy of its policies or procedures that it has, and will maintain, that describe how it carries out its obligations under this subsection.

1.13 Business Associate agrees that if it has a legal obligation to disclose any PHI, it will notify Covered Entity as soon as reasonably practicable after it learns of such obligation, sufficiently in advance of the proposed release date such that the rights of Covered Entity and the Individual to whom the PHI relates would not be prejudiced. If Covered Entity or the Individual objects to the release of such PHI, Business Associate will allow Covered Entity and/or the Individual to exercise any legal rights or remedies Covered Entity and/or the Individual might have to object to the release of the PHI, and Business Associate agrees to provide such assistance as Covered Entity or the Individual may reasonably request in connection therewith.

1.14 Part 2 Provisions:

- (i) To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits protected health information that is protected by Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 regulations; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.
- (ii) Notwithstanding any other language in this Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by Part 2 is subject to protections that prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.
- (iii) Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

2. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

2.1 General Use and Disclosure Provision. Business Associate agrees to use or disclose PHI only as permitted or required for the purpose of performing its obligations under the Services Agreement, provided such use or disclosure of PHI would not violate the HIPAA Regulations if done by Covered Entity, including the minimum necessary requirements in the HIPAA Regulations and Subpart E of 45 CFR Part 164, or violate the terms of this Agreement.

2.2 Specific Use and Disclosure Provisions:

- (i) Except as otherwise limited in this Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain

confidential and used or further disclosed only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notified the Business Associate of any instances of which it is aware in which the Confidentiality of the information has been breached.

- (ii) Only when specifically authorized by Covered Entity in writing separate from this Agreement or in accordance with a specific provision of the Services Agreement, Business Associate may use PHI: (a) to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B); or (b) to create de-identified health information in accordance with 45 C.F.R. §164.514.
- (iii) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

2.3 Offshore PHI Prohibition. Without express written consent from Covered Entity, Business Associate shall not, and shall ensure that its agents or Subcontractors shall not, a) disclose, transmit, create or maintain any PHI outside of the United States, or b) access, use, maintain, transmit, create, receive or disclose PHI while outside of the United States.

3. OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices, prepared for compliance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

3.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

3.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

3.4 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be effective as of the Effective Date, and shall terminate after the exercise of any of the termination provisions set forth below and when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity and no copies of PHI are retained, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

4.2 Termination by Covered Entity. Covered Entity may immediately terminate this Agreement and any Services Agreement if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may provide Business Associate with thirty (30) days written notice of the existence of an alleged material breach and afford Business Associate an opportunity to cure upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity. Failure to cure in the manner set forth in this Section is grounds for the immediate termination of this Agreement and any Services Agreement. Nothing contained herein shall be deemed to require Covered Entity to terminate this Agreement if termination is not feasible.

4.3 Termination by Business Associate. If Business Associate makes the determination that a condition material to the performance of this Agreement has changed under any Services Agreement or this Agreement, or that Covered Entity has breached a material term of this Agreement, Business Associate may

provide (30) days notice of its intention to terminate this Agreement and the Services Agreement. Business Associate agrees, however, to cooperate with Covered Entity find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as any Services Agreement is in effect.

4.4 Automatic Termination. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the last Service Agreement in effect between the parties.

4.5 Effect of Termination. Upon any termination pursuant to this Section or otherwise, Business Associate shall return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(ii)(J) if it is feasible to do so, and shall not retain any copies of the PHI. If return or destruction is not feasible, Business Associate will notify Covered Entity in writing, including: (i) a statement that Business Associate has determined that it is infeasible to return or destroy the PHI, and (ii) the specific reason(s) for such determination, which reason(s) must be agreed to by Covered Entity. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. Business Associate further agrees to recover any PHI in the possession of its Subcontractors or agents and to return or destroy the PHI as set forth in this Section; if infeasible, Business Associate must provide a written explanation to Covered Entity and require the Subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the Subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5. INSURANCE AND INDEMNIFICATION

INSURANCE AND INDEMNIFICATION

Business Associate shall maintain or cause to be maintained Professional / Technology Liability insurance and Network Security & Privacy Liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in connection with the services provided under this agreement, as well as all Business Associate costs, including damages it is obligated to pay Covered Entity or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Confidential or Personal Information, regardless of cause (including, without limitation, Vendor negligence or gross negligence and unlawful third party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Information was lost or compromised; (b) costs to provide credit monitoring and credit restoration services to individuals whose Personal Information was lost or compromised; (c) costs associated with third party claims arising from the Security Breach or loss of Personal Information, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. Such insurance shall provide coverage for up to \$10,000,000.00 (10 million dollars). For the purposes of this Section, " Security Breach" means (1) the failure by the Business Associate to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Business Associate of: (a) Personal Information in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Business Associate's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by Business

Associate in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.

Business Associate shall indemnify, defend and hold harmless Covered Entity and its parent corporation, subsidiaries and related entities, their directors, officers, agents, servants, and employees (collectively “the Indemnitees”) from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney’s fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of any breach or alleged breach of the terms of this Agreement by Business Associate or any agent or Subcontractor of Business Associate.

Nothing herein shall limit any obligations of Business Associate to indemnify and provide insurance as set forth in the Services Agreement or otherwise, and no terms of the Services Agreement or any other agreement between the parties shall limit the requirements of this Section.

6. NOTICE

All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt of attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; (c) overnight delivery service with proof of delivery; or (d) facsimile with return facsimile acknowledging receipt. Except as otherwise herein provided notices shall be sent to the address below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity: Lincoln Prairie Behavioral Health Center
5230 S. Sixth Street Rd.
Springfield, IL 62703
Attention: CEO

If to Business Associate: Board of Education of New Berlin CUSD 16
600 N. Cedar St.
New Berlin, IL 62670

7. AUDITS

Business Associate shall audit its compliance with the requirements of this Agreement at least annually during the term of this Agreement (and more frequently as needed in order to address operational or electronic systems changes) including without limitation, its Security Measures and its Administrative, Physical, and Technical Safeguards. Business Associate agrees that in the event of a Breach or other violation of this Agreement by Business Associate, or any agent or Subcontractor of Business Associate, Covered Entity may have an assessment of compliance conducted utilizing a third party designated by Covered Entity, at Business Associate’s expense, and Business Associate shall reasonably cooperate with Covered Entity to implement corrective actions. When Covered Entity has a reasonable, good faith belief that there has been a Breach or other violation of this Agreement, Covered Entity may have such third party assessment conducted at Covered Entity’s expense, and if a Breach or violation is found, Business Associate shall be responsible for the costs of the third party assessment, and shall reasonably cooperate with Covered Entity to implement corrective actions. Business Associate shall make such audits, assessments, and related documentation available for review by Covered Entity upon request. Nothing in this Section 7 shall limit any other rights or remedies of Covered Entity.

8. MISCELLANEOUS

8.1 Regulatory References. A reference in this Agreement to a section in the Code of Federal Regulations (“C.F.R.”) means the section as in effect as of the effective date of this Agreement, or as thereafter amended.

8.2 Independent Contractor. The parties to this Agreement are independent contractors in carrying out the duties and obligations of this Agreement. This Agreement is not intended, and shall not be construed, to create any relationship between the parties that would allow one party to exercise direction or control over the manner or method by which the other party performs services, duties or obligations under this Agreement.

8.3 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with legal requirements including, without limitation, the requirements of HIPAA, the HIPAA Regulations and the HITECH Act. Except as provided specifically herein, this Agreement may not be modified or amended except by an instrument in writing declared to be an amendment hereto and executed by both parties.

8.4 Survival. The respective rights and obligations of each party under Sections 1.4, 1.5, 1.6, 1.8, 1.10, 4, 5, 6, 7, 8.4, 8.8, and 8.10 of this Agreement shall survive the termination of this Agreement.

8.5 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, the applicable HIPAA Regulations, the HITECH Act and related statutory provisions and regulations.

8.6 No Third Parties. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns. There are no third parties to this Agreement and nothing herein is intended for the benefit of a third person.

8.7 Coordination of Documents. In the event of a conflict between a provision of this Agreement and a provision of a Services Agreement, the provision of this Agreement shall control.

8.8 Choice of Law. This Agreement shall be governed and construed by applicable federal law and by the laws of the state where Covered Entity is physically located without regard to laws relating to choice of law or conflicts of law.

8.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties on this subject matter and supersedes all other proposals, understandings or agreements, whether written or oral, regarding the subject matter hereof, including any prior Business Associate Agreement.

8.10 Disputes. If any controversy, dispute, or claim arises between the parties with respect to this agreement, the parties shall make good faith efforts to resolve such matters informally.

8.11 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the statutes and regulations cited herein will be adequate or satisfactory for Business Associate’s own purposes. Business associate is solely responsible for adequately safeguarding PHI in accordance with applicable law.

9. FURTHER ASSURANCES

The parties agree that from time to time they will amend the Agreement to account for changes in the applicable law or regulations including, without limitation, those arising out of the HITECH Act or other applicable acts and regulations subsequently promulgated and that, on and after the effective date of this Agreement, such then applicable provisions shall be incorporated by reference into the Agreement as written until such time as the parties may amend the Agreement to otherwise specifically provide for the subject matter of such provisions but in no case for a period longer than one year from the effective date of any such statutory or regulatory provision, during which time the parties shall negotiate further assurances in good faith.

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of the
26th day of July 2022.

_____(BUSINESS ASSOCIATE)

By:_____

Name & Title: _____

Date:_____

_____(COVERED ENTITY)

By:_____

Name & Title:_____

Date: _____

Surplus Equipment Disposal

Some has been in storage since 2009

- 1 HP CP4025 Laser Printer
- 2 HP CP4025 Laser Printer
- 3 HP CP4025 Laser Printer
- 4 HP CP4025 Laser Printer
- 5 HP CP4025 Laser Printer
- 6 HP CP4025 Laser Printer
- 7 4 black desk , wood top
- 8 6 black desk, wood top
- 9 6 black desk, wood top
- 10 6 black desk, wood top
- 11 6 black desk, wood top
- 12 6 black desk, wood top
- 13 rolling cart for interactive tv
- 14 I-Pad rolling charger cart

Rich
8-1-2022

- 15 I-Pad rolling charger cart**
- 16 I-Pad rolling charger cart**
- 17 interactive board rolling cart obs**
- 18 interactive board rolling cart obs**
- 19 cart for projector**
- 20 2 drawer file cabinet**
- 21 2 drawer file cabinet**
- 22 2 drawer file cabinet**
- 23 2 drawer file cabinet**
- 24 2 drawer legal file cabinet**
- 25 7 gray desk**
- 26 6 gray desk**
- 27 6 grey desk**
- 28 6 grey desk**
- 29 6 grey desk**
- 30 6 grey desk**

- 31 6 grey desk**
- 32 3 gray desk**
- 33 6 metal desk, wood top**
- 34 6 metal desk, wood top**
- 35 5 metal desk, wood top**
- 37 0**
- 38 6 chairs**
- 39 6 chairs**
- 40 6 chairs**
- 41 8 chairs**
- 42 8 chairs**
- 43 6 chairs**
- 44 6 chairs**
- 45 4 chairs**
- 46 8 chairs**
- 47 6 chairs**

- 47 6 chairs**
- 48 8 chairs**
- 49 8 chairs**
- 50 4 chairs**
- 51 4 chairs**
- 52 4 cloth chairs**
- 53 7 chairs**
- 54 6 chairs**
- 55 6 chairs**
- 56 6 chairs**
- 57 6 chairs**
- 58 6 chairs**
- 59 6 chairs**
- 60 6 chairs**
- 61 6 chairs**
- 62 2 chairs**

63 3 chairs

64 30x 60 table

65 computer switch

66 computer switch

RESOLUTION TO SELL/DISPOSE OF SURPLUS OR OUTDATED EQUIPMENT/SUPPLIES

WHEREAS, certain equipment or supplies owned by New Berlin C.U.S.D. #16 are no longer necessary for its operation;

RESOLVED, to dispose of certain supplies or equipment described below:

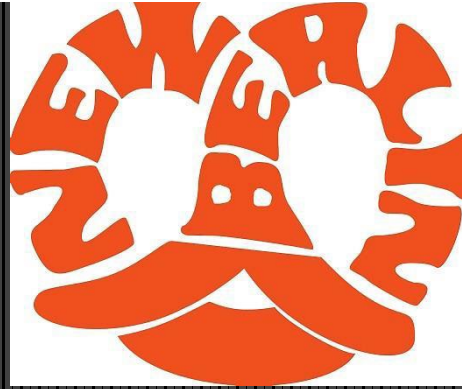
SEE ATTACHED LIST

The undersigned hereby certifies that he/she is the duly elected and qualified Secretary of New Berlin C.U.S.D. #16, a public school district formed pursuant to the laws of the state of Illinois, and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Education and that said meeting was held in accordance with state law on August 4, 2022, and that said resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Secretary this 4th day of August of 2022.

Secretary
Board of Education

August 4, 2022



TEACHER HANDBOOK

2022-2023

Updated: August 2022

COMMUNITY UNIT SCHOOL DISTRICT #16
600 N CEDAR STREET
NEW BERLIN IL 62670
(217) 488-2040
(217) 488-2043
2020-2021

This handbook is subject to change as deemed necessary by the district and will be understood to be a guide for the district to communicate normal operating procedures or policies.

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Shelley Haas	5
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PART I - ORGANIZATION

TELEPHONE NUMBERS OF INTEREST

CACC	529-5431
Shannon Fehrholz, Regional Supt.	753-6620
	753-6622
	753-6623
County Tribune	435-4511 (fax)
New Berlin Bee	438-6155
New Berlin Library	488-7733
New Berlin Post Office	488-7670
SASED Spec. Ed.	786-3250

BOARD OF EDUCATION

Stephanie Neuman – President

Holly Kotner – Vice-President

Jenny Mann – Secretary

Josh Beard

Bridget Williams

Chris Gordon

Bill Marr

STAFF LIST

SUPERINTENDENT
Jilinda Larson

ADMINISTRATIVE SECRETARY
Cindy Moore

NEW BERLIN ELEMENTARY PRINCIPAL
Brandi Maxedon

BUSINESS OFFICE
Lori Niemeier, CFO

Terri VanTine, Admin. Assistant

NEW BERLIN ELEMENTARY ASSISTANT PRINCIPAL
Shelley Haas

Denise Talbert, Accounts Payable Clerk

JUNIOR HIGH PRINCIPAL
Tim Roberts

MAINTENANCE/CUSTODIAL SUPERVISORS
New Berlin JR/SR High School – Matt Brown
New Berlin Elementary School – Rich Clark

HIGH SCHOOL PRINCIPAL
Hattie Llewellyn

FOOD SERVICE DIRECTOR
Heather Pidcock

DISTRICT ATHLETIC AND ACTIVITIES DIRECTOR
Blake Lucas

TRANSPORTATION DIRECTOR
Seth Hill

TECHNOLOGY DIRECTOR
Kevin Cummins

ORGANIZATIONAL CHART



COMPLAINTS AND CHAIN OF COMMAND

Parents are often discouraged when they attempt to communicate with the superintendent and school board members and are sent back to building-based officials in order to resolve a problem their child may be experiencing in school. To prevent that frustration, parents can become informed about the “chain of command”, or where to begin the communication sequence regarding their problem or concern.

Many parent and community questions are easily and completely answered by communicating directly with the educator in charge of the class or program. Each situation should first be addressed at whatever level the initial action was taken before taking it to the next level. This document does not supersede any employee’s or citizen’s right to contact Board members directly. However, whenever a complaint is made directly to the Board as a whole or to a Board member as an individual, it will be referred to the administration for study and possible solution.

1. On Matters Involving Instruction/Curriculum

- a. Classroom Teacher
- b. Principal
- c. Superintendent
- d. Board of Education

- 2. On Matters Involving Student Discipline**
 - a. Classroom Teacher
 - b. Assistant Principal
 - c. Superintendent
 - d. Board of Education

- 3. On Matters Involving Athletics or Extra-Curricular Activity**
 - a. Coach or Club Sponsor
 - b. Athletic Director
 - c. Principal (eligibility/student discipline)
 - d. Superintendent
 - e. Board of Education

- 4. On Matters Involving Facilities/Grounds/Building**
 - a. Facilities Directors
 - b. Superintendent
 - c. Board of Education

- 5. On Matters Involving Transportation**
 - a. Transportation Director
 - b. Assistant Principal (for student discipline)
 - c. Chief Financial Officer
 - d. Superintendent
 - e. Board of Education

- 6. On Matters Involving Cafeteria and Food Service**
 - a. Food Service Director
 - b. Assistant Principal (for student discipline)
 - c. Chief Financial Officer
 - d. Superintendent
 - e. Board of Education

- 7. On Matters Involving Student Health & Wellness**
 - a. School Nurse
 - b. Principal
 - c. Superintendent
 - d. Board of Education

- 8. On Matters Involving Administration and All Other District Directors**
 - a. Superintendent
 - b. Board of Education

- 9. On Matters Involving Superintendent**
 - a. Board of Education

PART II - TEACHERS GENERAL PROCEDURES AND POLICIES

(This handbook is subject to change as deemed necessary by the district and will be understood to be a guide for the district to communicate normal operating procedures or policies).

A. ACTIVITY AND EDUCATION FUNDS

1) Expenditures

Purchases are not to be made unless the purchasing procedures established by the Board of Education and Superintendent of Schools are followed. These procedures are designed to facilitate the purchase of approved items without undue delay. Contact the Business Office if you have questions about procedures.

a) Purchasing with District Funds using Purchase Orders

An amount of District money is budgeted for supplies and equipment each year. Money is allocated to principals to use in the schools. Staff members are advised of these funds and the purposes for which they may be used. Purchase order forms are to be completed and submitted to the principal in accordance with instructions. All expenditures from district funds (or activity funds) must have prior approval from principal. Receipts are required for all credit card purchases. Receipts are required for all reimbursements. The district will not reimburse for sale tax. **Open P.O.** purchases must use a purchase order and have approval from the principal prior to the purchase.

b) Activity Funds

Activity Fund records are to be kept by each sponsoring staff member. The Business Office will maintain complete records on all activity accounts and will provide monthly reconciliation to each sponsor. Sponsoring teachers must maintain a positive balance in their accounts at all times. The Business Office will assist in placing orders and paying the bills from these accounts. Receipts are required. All expenditures must have approval from the principal prior to purchase.

2) Receipts

All money collected by a staff member, whether it is from activities or from educational fund categories, must be turned into the Business Office. Do not leave funds in a classroom. Follow the banking procedures.

B. ABSENCES AND LEAVES – TEACHER

1) Personal Illness, Family Illness, Family Emergencies

If you must be absent from work because of personal illness, family illness, etc. contact the building principal, or designee, as soon as possible. Be prepared to give your principal detailed instructions on seating charts, grade books, lesson plans and other items that might be needed by the substitute teacher. If you have needed items

at home, please arrange to have those items brought to school. The substitute teacher must have the necessary information in order to conduct a proper class. Teachers are responsible for daily lesson plans as well as lesson plans for substitutes.

2) Other Absences

Leave of absence, personal leave, association leave, maternity leave and paternity leave may be granted in accordance with conditions established and listed in the AGREEMENT between the School Board and the Teacher Association.

C. ASBESTOS REPORT

PUBLIC NOTIFICATION

This notice is to inform building occupants of the potential hazard and locations of asbestos containing materials. It has been determined by the Illinois Department of Public Health and the U.S. Environmental Protection Agency that asbestos is a potential health hazard, and precautions should be taken to avoid disturbing any asbestos containing materials. Materials containing asbestos have been found in the New Berlin Jr/Sr High School. Any evidence of disturbance or change in condition will be documented in the Management Plan as required by law. Cleaning and maintenance personnel who recognize the danger of asbestos are taking special precautions during their work to properly guard against disturbance of the asbestos containing materials. All asbestos containing materials are inspected and evaluated periodically and additional measures will be taken when needed to protect the health of building occupants. This information was distributed to all building occupants by:

Reliable Environmental Solutions, Inc.
4211 Westgate Dr.
Springfield, IL. 62711

D. PESTICIDE NOTIFICATION REGISTRATION

District #16 has an Integrated Pest Management (IPM) Policy which incorporates building maintenance, sanitation, physical barriers and as a last resort, the most safe, effective use of pesticide. Although we have no intention of spraying or fogging with pesticides, in the unlikely event this is found to be necessary, we are creating voluntary registration. By putting your name on this list, you are asking to be notified two days before an airborne pesticide application. In the event of an extreme emergency and pesticides must be used immediately, we will notify you as soon as possible. Contact the Superintendent's Office if you wish to be added to the registry.

BUILDING SECURITY

All building keys/entry cards/fobs will be issued through the Superintendent's office (or designee); keys must be signed for and must be returned when requested.

Do not allow anyone else to have custody of your keys/entry cards/fobs. This includes students.

School offices, computer labs, band room and chemistry labs shall have security alarm systems. Do not enter those areas, other than during the normal school hours, without receiving instructions on the alarm system.

Teachers using the building in the evening, weekends, or holidays must notify the principal and are responsible to make sure the building is properly secured before leaving.

Report lost keys/entry cards/fobs to the office immediately. A \$100.00 fine will be issued if keys/entry cards/fobs are lost.

COMPLIMENTARY PASS

Staff members shall use their staff ID as a pass to all school activities, with the exception of student money-making activities and tournament events. This will entitle employee and a guest admittance.

PROFESSIONAL DEVELOPMENT

The school district provides funds each year to help defray costs incurred by staff members when attending conferences or going on school visits. Each staff member shall have the opportunity to attend a conference relating to his or her teaching assignments and certification.

The board shall provide money per teacher (non-transferable) for the purpose of professional development as per the collective bargaining agreement.

2021-2022	\$600.00
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All professional development opportunities must be approved in advance by the principal and superintendent.

Staff members shall submit a request for conference attendance or visitation in accordance with the "Agreement" between the school board and the teachers' association. This request must be approved by the Building Principal for reimbursement for the conference or the amount of money allotted for that purpose.

TUITION REIMBURSEMENT

The school district provides \$125 per college course credit hour, up to 6 credit hours per year in accordance with Section 8.6 of the Collective Bargaining Agreement.

CONFIDENTIALITY OF INFORMATION

As education professionals we need to be committed to promoting a respectful environment that retains the full trust and confidence of students, staff, and faculty. In our daily work, we are in the unique and responsible position of having access to and being aware of an array of highly sensitive personal and medical information. This information comes to us directly from individuals or third parties associated with them. Information we have received of a personal nature will be disclosed to other parties or colleagues only when it is legally required or on a strict need-to-know basis.

Information on students or staff should not be shared with other students. Discretion should be used when information is communicated orally. Be aware of your surroundings and that others may overhear a conversation, for example, in hallways, offices, classrooms, restaurants, and other public places, such as sporting events or community gatherings.

Staff members must report the confidential nature of information to the administration if the information is deemed necessary or would aid proper decision making by the administration, regarding students, parents, other staff members.

List of students may not be released unless the superintendent gives approval.

COURT DUTY

Full salary will be paid during the time an employee is on jury duty, serves as a witness in a trial, or has a deposition taken in any school related matter pending in court. Court duty remuneration, less mileage and meal expenses, shall be reimbursed to the District for those working days when the employee is on court duty.

An employee shall give notice of pending jury duty to the District no later than five (5) days prior to the date the employee will serve.

CURRICULUM

The Superintendent of Schools may establish a committee or committees to provide staff input for curriculum development. All significant curriculum changes must be approved by the Board of Education following recommendation by the Superintendent of Schools.

EMERGENCY CLOSING OF SCHOOL

If the Superintendent of Schools determines that school is to be closed for an

emergency the District will use a phone automated system to notify staff. Please make sure a current phone number is recorded in the Superintendent's Office.

We will try to notify Local radio stations by 6:15 a.m. We will try to contact the news stations in addition to using our automated call system.

Sometimes contact cannot be made with the station due to the number of local cancellations.

FACULTY/COMMITTEE MEETINGS

As per the CBA, teachers are required to attend faculty meetings. Faculty meetings may be scheduled either before school or after school. A yearly calendar with all faculty meeting dates will be given to all staff at the beginning of the year. Staff should reserve these dates and avoid scheduling any appointments, etc. Teachers are also required to attend conferences with students and parents, as well as, open houses.

Committees may be established by the school district administration to meet the needs and interests of the school system. Teachers are expected to accept assignments to serve on these committees.

GIFTS, GRATUITIES, ETC.

Staff members shall not accept gifts, gratuities, etc. from anyone who has, or may have, a business relationship with the school district, unless the Superintendent of Schools gives permission. Any such item approved for acceptance becomes the property of the school district.

HANDLING EMERGENCY SITUATIONS

1. Fighting

- a. Do not ignore the fight situation.
- b. Don't leave the confrontation area.
- c. Send another staff member or student for help.
- d. Scan the situation for evidence of weapons being used.
- e. Try to step in between the fighters ONLY if you feel that you can control them. If you don't feel like you can, then you need to continue to provide them verbal commands to stop fighting.
- f. Yell, "Stop It" several times. Keep repeating, if necessary. If you have a whistle with you, keep blowing until additional help arrives. If you have water with you, throw it on the students.
- g. If you are able to break up the fight, please wait for additional help to arrive to walk the students to the office. If you feel that you can handle the students, then have one student walk ahead of you while the other student is beside you or one step behind you.

2. Injury Emergency

- a. Don't ignore the situation.
- b. Stay with the injured student.
- c. Stay calm.
- d. Send another staff member or student for help.
- e. Use emergency first aid and/or life-saving training if needed.

HEALTH/LIFE SAFETY GUIDELINES

- **Emergency signage** is to be posted at all times within each classroom throughout the school year.
- A 42-inch safe, reliable and unobstructed **means of access** travel shall be provided from any location in an occupied room at all times.
- A **door** is required to look like a door. Means of egress doors shall be readily distinguishable from adjacent construction and finishes such that doors are easily recognizable as doors. Curtains, drapes, decorations or similar materials shall not conceal egress doors. (This can be maintained by not covering an area of at least four (4) inches wide on the outside perimeter of the door and door hardware shall be visible or not covering 12 inches at bottom and top of door and leave 8-inches uncovered around the door handle hardware.)
- Glass panels on **classroom doors** are required to have a minimum of 100 square inches of viewing space.
- **Door stops** are to be removed from exit doors and doors should be closed when classrooms are vacant.
- Magnetic slips **locking door hardware** from latching are found throughout the building. Doors are required to latch to prevent the spread of fire.
- There should not be any paper adhered to **ceiling tile** or hanging from the ceiling and/or lights.
- On any **wood frame doors**, please refrain from using tape
- All **chemicals** are to be stored in secure areas and doors locked when a responsible adult is not present.
- Potpourri pot with wax melt is not acceptable or other items that have **hot liquids**.
- Candles and items using **open flames** are not acceptable.
- All **sprinkler heads and smoke detectors** should have a clearance area from the ceiling of at least 18 inches and 24 inches in non-sprinkled area.
- There are to be no **extension cords**. Please utilize power strips. See Rich or Matt if you need one. (An UL approved heavyweight extension cord can be used as a temporary source of power but is required to be unplugged from the wall and removed after each use.)
- No storage of flammable products is allowed in **boiler rooms**.
- **Boiler rooms** are not storage rooms. The boiler room shall be kept free of all material and equipment not necessary to the operations of the heating system. **Combustible storage** of any kind is not permitted in boiler rooms.

- Artwork/student work in **hallways/corridors** is to be limited to 20% or less of the wall space.
- Artwork/student work in **classrooms** should be limited to 30% or less of wall space. Decorative paper is not to be used as wallpaper in classrooms.
- **Safe Storage** – items are to remain inside the perimeter of the top of the cabinet and/or shelf. Items are not to be stacked in a manner that they are slanting in the direction of the open portion of the stored area.
- **Hallways/corridors** are to be free of tables, chairs, etc
- Chains and padlocks are never used on **doors** to prevent egress from the building.
- Staff members utilizing science labs, family and consumer sciences and agricultural technology areas should be knowledgeable of **shut-off valves** for power and gas in these areas.
- **Classrooms** are not to contain any upholstered furniture, carpets, pillows or other items covered with fabric or upholstery without proof of materials being non-flammable. These articles are to have original tags stating that they meet the California Flammability code and/or have Class I fire rating.
- All **electrical items** have labels stating they are UL or ETA approved.
- Christmas/**Decorative lights** aren't allowed as decoration on bulletin boards or outlining whiteboards unless the plug is cut off making them inoperable.
- **Personal refrigerators, coffee pots, microwave ovens**, etc are not to be present in classrooms.
- **Fire extinguishers** are to remain unobstructed and visible. Do not hang items on the extinguisher.
- Utilize a **ladder** not a classroom chair when hanging items at a height or when you are needing to get something out that is taller than you.

INJURY - STAFF MEMBER

Staff members are protected from financial loss by Worker's Compensation for any injury suffered in an employment related situation. In case of injury, obtain an accident report form from the office. Return the completed form as soon as possible. Staff members are required to notify the office as soon as reasonably possible of any injury that might cause loss of work or visits to hospitals or doctors.

LEAVING THE CLASSROOM

It is our responsibility to supervise children throughout the day. We are held “in loco parentis” meaning “in place of parent”. Teachers are not to leave students **unsupervised in the classroom**. If it is necessary that a teacher be absent from class for a period of time, arrangements should be made with the principal to provide supervision. If an emergency should develop, ask another teacher to supervise the class.

LESSON PLANS

Each staff member will keep daily lesson plans. Staff members are expected to

prepare written lesson plans **using the online** plan book or any other means must be submitted and approved by principal. Lesson plans should be sufficiently explicit so substitute teachers can conduct a meaningful class.

LIABILITY INSURANCE

In accordance with Illinois law, New Berlin CUSD #16 provides liability insurance for the protections of each staff member.

LOG OF PARENTAL CONTACT

Teachers are required to keep a log of parental contacts (regarding notes, phone calls, conferences, etc.) throughout the year. The log should be turned into your principal at the end of the school year. This will be used to determine the number of students whose parents had contact with the school for the school report card. Teachers should notify their principal if any parental or public contact has a particularly negative connotation. Principals that are kept informed can aid the teacher. It is important that any threats also be reported.

MAILBOXES

Mailboxes for teachers are located in their respective offices or workrooms. These mailboxes and school email should be checked each morning and evening. **Please do not ask students to get mail from your mailbox.**

MEDICATION GUIDELINES

Medications are administered at school in accordance with the Recommended Practices and Procedures Manual from the Illinois State Board of Education. Administering medications at school is discouraged. However, some pupils with long-term chronic illness or disability may require medication during the day. Only in exceptional cases, where failure to take medication could jeopardize the child's health and/or education, should medication be administered at school. Medications of any kind are **not** to be dispensed or approved by any staff member. All medications being taken by students must be given to the school nurse and used under her/his supervision. If the school nurse is unavailable, medication shall be administered through the school office by the principal or designee.

1. **All** prescription medications that are brought to school must be sent to the nurse's office to be stored in a locked cabinet. It is recommended that medications be delivered to the school by a parent.
2. Over the counter non-prescription medications such as cough syrups are discouraged at school. Only with specific written request from the parent shall it be allowed.
3. **Prescription medications must be sent to school in the original container** as dispensed by the pharmacy or physician and accompanied by a written note from

the parent and physician including the name of the drug, dosage, route of administration, time of administration, and duration of therapy. Any change in the dosage or administration must have written authorization from the prescriber. Medication forms are available in the nurse's office.

4. The morning doses of medications should be given at home.
5. Students who require acetaminophen (generic Tylenol) for complaints of headache or pain must have the permission slip on the enrollment form signed by the parent. Generic Tylenol is kept in a locked cabinet in the nurse's office for self-administration by the student with the nurse monitoring the storage and safety of administration.
6. The school reserves the right to have the time of medication administration at school adjusted to meet the schedule and availability of the nurse.
7. Questions concerning medications will be referred to your physician.
8. Self-managed medications will be evaluated individually by the school nurse (i.e.: asthma inhalers). Written directions for self-managed medications must be obtained from the physician and parent.
9. The school has not only the right, but also the responsibility, to refuse to administer any medication at school if properly qualified individuals are not available. The District cannot require a teacher to administer medicines to students. School guidelines state clearly that medicine should be stored in the nurse's office and administered by either the nurse or the principal. It is allowable by law that a teacher can administer medicine by choice if an unusual situation should arise that would require medication and the nurse or principal would not be available.
10. The school will ascertain from the parent and/or the physician the necessity for administering medication during the school hours and will retain the discretion to reject requests that do not meet the medication guidelines.

NEWS RELEASES

The Superintendent of Schools is designated by the Board of Education as having responsibility for the dissemination of information regarding the school district to the news media. Staff members are strongly encouraged to submit items to the Principal for approval prior to placement in media. **If you are contacted by the news media, please let the Principal know. Parent permission must be obtained annually for a student's name, picture, work, or information about the students to appear in media.** Members of the news media entering the school building should be referred to the office of the Superintendent of Schools.

NURSE

Nurses are assigned to cover all attendance centers in the school district. The nurses' schedule will be available to all staff members.

When the nurse is in an attendance center, students who are ill should be sent to her as per building procedure. Otherwise, students must be sent to the principal's office. In the junior/senior high school all students should report to the office before reporting to the nurse, unless emergency conditions exist.

Any student leaving is to report to the office. If the student is ill, he/she should also report to the nurse. Any student, who does not follow the above procedures and leaves without notification to the office, is unexcused.

All school accidents must be reported by the teacher to the nurse's office by the end of the school day. An incident form must be included. Document everything. School accidents include any accident happening on the way to and from school, on the school grounds, in the school building or during school-sponsored activities.

PAYROLL

Certified staff members may choose between twenty (20) or twenty-four (24) semi-monthly pay installments. Employees will be paid in accordance with the Agreement.

POLITICAL ACTIVITIES

- Board of Education policy prohibits staff members from engaging in partisan political activity during the hours the staff member is employed by the school district. Nor shall students be used in any manner to promote partisan political activity. This policy does not prohibit those activities of a political nature that constitute legitimate subject matter in the appropriate classrooms. When teaching, be informative and present a balanced view. Be respectful of the rights and opinions of everyone. Emotional criticisms and hurtful sarcasm should be avoided.

PROFESSIONAL DRESS AND APPEARANCE

The personal dress and appearance of teachers has an influence on the attitude and conduct of students as well as having a decided effect on how people in the community view our school and the teaching profession. It is important, therefore, that the entire staff maintain a professional appearance and demeanor. Jeans are acceptable for "Casual Friday," as long as, they are paired with other dress-casual attire. Yoga pants, leggings worn as pants, hoodies/sweatshirts and casual T-shirts, aside from spirit wear, are not appropriate. Athletic wear would be considered appropriate for individuals teaching PE. Footwear should mirror your professional dress and be safe and appropriate for your position

SALES/DONATIONS IN A SCHOOL BUILDING

Board of Education policy prohibits staff members and students from requesting

donations, or participating in sales projects, unless permission is given by the appropriate principal and approved by the Superintendent of Schools.

SCHOOL SUPPORT ORGANIZATIONS

A way to enlist parent support for the school is through the organization of parent groups. Staff members should support these organizations through membership, as well as participating in scheduled activities.

1. Parent Teacher Organization - The PTO is for parents of students enrolled in K-5.
2. Music Booster Club - This club includes parents of all students enrolled in music groups.
3. Athletic Booster Club - This athletic program in the junior and senior high schools receive support from this group.

These organizations raise funds to help purchase equipment and pay for other activities. They also assist in other ways to promote their respective programs.

SEXUAL HARASSMENT (EMPLOYEES)

The practice of sexual harassment is contrary to law and the policy of the school district. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Employees who engage in conduct which constitutes sexual harassment shall be subject to disciplinary action including termination for cause.

Any person who believes himself or herself to be subject to sexual harassment may file a written complaint with the Superintendent who shall promptly conduct an investigation. The investigation may include interviews and hearings at which testimony is taken under oath. At the conclusion of the investigation, and in no case later than 30 days from the filing of the complaint, the Superintendent shall make a written report of his conclusions and recommendations, which he may have drawn. In the event the person presenting the complaint is dissatisfied with the recommendation and the conclusion of the Superintendent, an appeal may be taken to the Board of Education. An appeal shall be filed with the Board of Education by service at the Board office. The Board of Education shall uphold or reject the Superintendent's recommendations and conclusions within 30 days of the presentation of the appeal.

Nothing herein shall operate to affect any rights granted any person by other statutes.

The hearing shall commence by the district presenting through direct testimony and evidence those facts upon which the proposed action is based. In addition, the district shall present any portions of the employee's record, which shall have bearing upon the proposed action. All testimony shall be under oath and shall be subject to cross-examination.

Following the presentation of the testimony and evidence in support of the proposed action, the employee shall have an opportunity to present testimony, evidence, and argument bearing upon the charge and the proposed action.

At the close of the evidence, or as promptly thereafter as may be practicable, the person conducting the hearing shall make a written decision, which shall include findings of fact upon which the decision is based.

STAFF RELATIONS

The school system provides an organizational structure commonly called a chain of command. Matters requiring administrative action should always be referred to the person with immediate responsibility for that action.

SUPPLIES FOR TEACHERS

At the Elementary level and JH level, common supplies such as paper, paper clips, staples, pencils, ink pens, chalk, tape, etc. can be obtained from the individual school secretaries. Teachers at the High school level should order these supplies yearly during the spring, budgetary process.

TOBACCO, DRUGS AND ALCOHOL

All District workplaces are drug- and alcohol-free workplaces. All employees are prohibited from engaging in any of the following activities while on District premises or while performing work for the District:

- Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance, or being under the influence of any illegal substance or any detectible use of any illegal substance regardless of when or where the use occurred.

- Distribution, consumption, use, possession, or being under the influence of an alcoholic beverage; being present on District premises or while performing work for the District when alcohol consumption is detectible, regardless of when and/or where the use occurred.

- Possession or use of medical cannabis.

An employee who violates this policy may be subject to disciplinary action, including termination. Alternatively, the School Board may require an employee to successfully complete an appropriate drug- or alcohol-abuse rehabilitation program.

The Board shall take disciplinary action with respect to an employee convicted of a drug offense in the workplace within 30 days after receiving notice of the conviction.

TUTORING

Tutoring shall be defined as teaching; privately for pay and shall be reported as outside employment.

1. There shall be no private tutoring in the school building.
2. No student shall be excused from school for tutoring.
3. No teacher shall tutor a student for pay from his or her class during the school year.
4. In discussing tutoring with parents, each case shall be considered on its merits.
5. Building principals and teachers shall avoid recommendation regarding the tutor to be secured.
6. Parents shall be urged to keep the principal or teacher informed of tutoring that is done.

EMPLOYEE USE OF SCHOOL EQUIPMENT AND SUPPLIES

Board of Education policy prohibits the use of school facilities, equipment or materials for outside job interest without the approval of the Superintendent of Schools.

Please do not ask the secretaries to do your copying for you except in cases of emergencies.

LUNCH PROGRAM

School breakfast and lunch will be served daily and is available to all staff members. Meals should be paid for in advance either by check made payable to CUSD #16 or by credit card in the school office. Each staff member will be given a lunch card/ID which can be scanned by the computer. All accounts must have a positive balance at all times.

WEBSITE – TEACHER PAGES

Teachers are expected to create and maintain individual up-to-date web pages on the District website and/or assist with providing content to the district application as a measure to keep the community connected with the schools. These pages should include, at a minimum, the following: Teacher schedule, contact information, general class expectations/guidelines, course and homework information. Pages should contain current information at all times. For teachers of 6-12 students, all homework and pertinent information should be made available on Planbook and updated by Monday morning to reflect the new week.

PART III - STUDENTS-RULES AND REGULATIONS

ABUSED AND NEGLECTED CHILDREN

Illinois law requires that all suspected cases of child abuse and neglect is reported to the Illinois Department of Children and Family Services. All school employees are mandated reporters. You will need to call 1-800-25-ABUSE or 1-800-252-2873. Print out the CANT5 Written Confirmation of Suspected Child Abuse/Neglect Report :Mandated Reporters form which is on the IL DCFS website. You will need to fill out this form as you make the oral report. The written form **does not** replace the oral report. This is a requirement in addition to the oral report. This report is to be mailed at the address on the second page. If you need assistance with the procedures, please see your building principal. The appropriate principal must be advised immediately if a report is to be prepared and filed.

ACCIDENTS AND INJURIES

Staff members are to be alert to those conditions and situations where accidents are most likely to occur. Rules and procedures are to be adopted by staff members to minimize the chance of injury.

There is a school nurse, but that person is not always in the building.

If an injury does occur, please observe the following procedures:

1. If there is any question concerning the seriousness of the injury, do not move the student.
2. Immediately notify the school nurse and the building principal. They will decide on the course of action to be taken.
3. Parents should be notified as soon as possible of all serious injuries by the school nurse or the building principal.
4. Assist with the injured student until your help is no longer needed.
5. Complete an accident form and return it to the school nurse and district office and provide a copy of the completed form, (front & back), to the parent. If the nature of the injury appears to occur under questionable circumstances, only the district office shall determine whether or not to send the student accident insurance form to the parents.

ASSEMBLIES

All assemblies must be approved by the building principal and must be consistent with the educational objectives of the school district. Teachers are to instruct students as to the nature of the assembly program and as to what you expect of them in regard to courtesy and behavior. All teachers are to attend the assemblies to supervise their

class. Students are to use the restroom before the assembly and are not allowed to leave the assembly unless it is an emergency.

Students may be required to be seated by classes. If so, class sponsors are to sit with their classes. Other teachers are to scatter throughout the assembly area.

ATTENDANCE - STUDENT

Staff members are to encourage students to maintain good attendance records. The relationship between success in the classroom and regular attendance should be emphasized. Elementary teachers are to take attendance at the beginning of the school day. Junior/Senior high teachers shall make an electronic attendance report within the first ten minutes of each class. Class attendance records are to be maintained by the teacher for the school year and turned in at the end of the year.

The following applies to the Junior/Senior High: In the junior and senior high school a student absentee bulletin will be distributed electronically each morning following the collection of first period attendance reports.

The school office will determine whether or not a student has make-up privileges for time missed. Generally, excused absences are given for personal illness, quarantine, bereavement, family emergencies and observance of religious holidays. Other absences which are planned for in advance by the students (explained absences) may be approved by the appropriate administrator in advance of the absence. These may include medical appointment, family vacation, workdays and college days. Students are always responsible for signing out at the office. If a student leaves school for any reason without notifying office personnel, the absence will be unexcused.

I.H.S.A. and I.E.S.A. regulations state that a student must be in school for the last one-half day before participating in any practice or activity. This means that a student must be in attendance third and fourth periods in order to participate in an athletic contest. If a student is not in school for the entire afternoon, he/she cannot participate in practice or participate in a game that night unless one of the following conditions has been met:

1. doctor's note for appointment
2. funerals
3. court appointment verified
4. other emergencies at the discretion of the principal

Teachers may not excuse students from school without approval of the building principal. Any Junior/Senior High School student leaving school must report to the office and sign out.

BUS TRANSPORTATION – SCHOOL ACTIVITY

Any student who rides on a bus to a school activity must return on the bus. Only sponsors and/or coaches may release students to a parent.

CANDY, DRINKS AND PARTIES IN CLASS

Candy, food, gum and drinks are not allowed in hallways and lockers or class. Parties in class are discouraged and must be approved by principal. On special occasions parties may be allowed if approval is received ahead of time. If students have class luncheons the office and cafeteria must be notified at least 1 day prior.

CLOSED CAMPUS

Students are not permitted to leave the school campus from the beginning to the close of the school day.

Once a student has parked his/her vehicle they are not to go to the vehicle or leave without permission.

DISCIPLINE

Staff members are responsible for maintaining discipline in all situations involving students in the school building or at school activities. Supervision duty will be assigned by the Building Principal and the Superintendent of Schools.

Discipline is the responsibility of all staff members at all times. Good school discipline cannot be achieved or maintained without the help and coordination of all staff members and the administration working together. Good discipline is essential to the success of the educational program. Positive Behavior Interventions and Supports (PBIS) will be utilized in all New Berlin Schools. All classroom management plans should fall under these expectations and procedures.

When student behavior is positive, motivated, and appropriate, learning is successful and teaching is rewarding. Our schools must provide a positive and safe place in which children can grow emotionally and academically. It is about building good relationships first and foremost. Teaching and modeling expectations to students in the classroom, hallways, cafeteria, offices, gym, bus, etc. is key. Expectations should be stated and enforced consistently and fairly.

Classroom management is vital to student learning. Teachers are to design classrooms rules that will facilitate learning. Students must be instructed in these expectations and reminded of them frequently. Students are required to sign off on receiving the classroom management plan. These sign offs are to be kept in a secure location by the teacher in the event that it may be necessary for administration to request them. All teachers are to submit a copy of their Classroom Management Plan to their building principal/assistant principal. Administration has the authority to

amend or change a classroom management plan.

When a discipline problem develops in the classroom, it is usually best to do only what has to be done at the moment to quiet the disturbance. At the earliest possible time, meet with these students to clarify and correct the problem. Discipline problems sometimes intensify when a student is severely reprimanded in front of the class and feels the need to "save face."

Teachers are expected to handle their own discipline problems whenever possible. However, there are those occasions when student behavior becomes so chronically disruptive, or is so severe in nature, that the student must be removed from the classroom immediately. In these instances, students are to be referred to the Principal and/or Assistant Principal.

All procedures for processing referrals will be reviewed at the beginning of the school year.

The schools use a wide variety of disciplinary measures including denial of privileges, removal from the classroom, before or after school detention (including Saturday detention), DSR, suspension (out of school) and expulsion.

Detailed explanation of the school district discipline program can be found in the Student Handbook. In addition, the School Safety Officers are not responsible for getting the classroom under control for teachers.

ELIGIBILITY FOR ATHLETES

A student must meet scholastic eligibility rules established by the Illinois High School Association and New Berlin High School District #16 to participate in interscholastic athletic program. Teachers will be required to report grades for athletes on a weekly basis.

High school students must have passed seven of eight academic classes in the previous semester; in addition, participants must be passing in all subject areas in the current semester to be eligible to participate in interscholastic athletics.

Junior high school students must be passing in all classes to be eligible to participate in athletic programs. Address all questions on eligibility with principal and/or athletic director.

EXTRA-CURRICULAR ACTIVITIES

The school system offers a large range of student activities including clubs, athletics, drama, etc. These activities are an important part of the school program. Staff members are expected to attend all activities, practices or meetings of teams, groups, or clubs, which they sponsor or supervise. Staff members are expected to encourage

students to participate in these activities and to be supportive of their participation.

FIELD TRIPS-Curriculum Related

Board of Education policy recognizes the value of field trips and requires the Superintendent of Schools to develop guidelines and regulations for field trips. These guidelines and regulations are necessary because of the many potential consequences involved in taking students out of school for a period of time.

1. All field trips shall be supervised by staff members and other adults.
2. A field trip form must be completed and returned to the principal at least two weeks before the date of the field trip.
3. The field trip must be related to the educational program, include all pupils assigned in the class and be part of the school day.
4. Teachers in grades Pre-K thru 12 may request a field trip each year. The trip must be during the school day.
5. Students taking part in field trips must pay all costs of the trip, unless otherwise provided for by the Board
6. of Education.
7. Parents must give permission in writing for field trips.
8. Volunteer supervisors must be approved by principal with the appropriate safety checks completed.
9. Participating students and staff members must show proof of accident and health insurance coverage.
10. No students shall be excluded from any field trip because of a lack of funds.
11. Any trip taken out of state must be approved by the Board of Education.
12. Any field trips curriculum related or non-curriculum related that include overnight stay must be Board approved at least one month prior to the trip.

GRADES

Teachers shall establish reasonable standards for grades that accurately measures the students' mastery of the learning objectives. These standards shall be explained to students at the beginning of the school term. Students should be kept informed as to the status of their grades. All teachers will be responsible for inputting their grades using the online grade book system. Teachers should update grades weekly.

Our school district is on four nine-week grading periods. If a student is performing poorly or there is a significant change in academic progress at any time outside progress report dates, the teacher is to make a parent contact. If a student receives a D or F, they should include teacher comment(s) on the quarterly report. Incomplete grades should be given only to students who have a circumstance and have not yet had the opportunity to make up missed work. The teacher is responsible for updating incomplete grades. The principal and/or Director of Student Services will make the

communicate students that fall into this category.

The following grade scale has been established by the Board of Education and is the only acceptable scale to be used by teachers at all times:

JH/HS GRADING SCALE	
A	100-92
A-	91-90
B+	89-88
B	87-82
B-	81-80
C+	79-78
C	77-72
C-	77-72
D	67-62
D-	61-60
F	59-0

Mid-term reports shall be sent to parents of students who are failing or in danger of failing (D). Progress report dates will be shared at the beginning of the year.

K-3 Grading System

Grading System- A Standards Based Grading and Reporting System will be used for all subjects at the Elementary. Student progress will be reported using the following performance levels:

4 – Exceeds Expectations

Student is consistently performing above academic expectations

3 – Meets Expectations

Student is consistently performing/attaining all academic expectations

2 – Approaching Expectations

Student is progressing but not consistently performing/attaining academic expectations

1 – Significantly Below Expectations

Student is not progressing and/or is not attaining academic expectations

HOMEWORK

Homework assignments are important. When making homework assignments, there are a number of factors that should be considered:

1. The ability level of the student.
2. The amount of time available to students to do homework.
3. Homework should be a positive experience. It should not be busy work, nor should it be used as a disciplinary measure. It should be additional practice on exercises, reading and/or writing of material on a specific subject, in-depth follow-up classroom activities, independent reading, or project work related to a subject.
4. Starting the homework assignment in class allows the teacher the opportunity to correct misunderstanding about the assignment. It also ensures that each student does begin the assignment. Students should be academically engaged for the entire class period.

LEAVING SCHOOL DURING THE DAY

No teacher is to leave school during the school day unless permission is received from administration prior to leaving. For school safety purposes, teachers will be required to sign out in office utilizing the checkout binder in the main offices. Upon return, they are to sign back in.

SCHOOL EQUIPMENT & UNIFORMS ISSUED TO STUDENT

Teachers should keep complete records on all school equipment issued to students. Items, which are lost by students, or damaged through negligent use, must be paid for by the students. Coaches and sponsors are responsible for issuing and collecting school equipment. Inventories of all equipment and uniforms are required.

SEMESTER EXAMS

All high school students are required to take semester tests, which count 1/5 of the final semester grade. Failure to take a semester exam (unexcused) will result in a zero grade for that exam. Exam exemptions are listed in Junior High/High School Student Handbook.

TEXTBOOKS

Teachers should keep accurate records on the condition and number of textbooks issued to each student. At the end of the school term, textbooks will be collected. In accordance with instructions from the principal, fines may be levied for undue damage to text materials.

INVENTORIES

End of Year

Thorough inventories of equipment, textbooks and supplies should be kept by each teacher. On an annual basis, teachers will be required to update their inventory lists for insurance purposes. **All donated items by parents, items purchased by PTO grants or other community grants are the property of the district.**

Turn in grade books and lesson plans in to principal

EMERGENCY PROCEDURES

1. Procedure for reporting to the Principal's office in the event school officials, teachers, guidance counselors, and support staff observe any person in possession of firearm on school grounds

Staff members will be instructed on the first day of teacher in-service to report incidents of any person in possession of firearm on school grounds immediately to the Principal's office.

Upon Notification of an incident, the Principal will:

- ensure that the building is secure, and students are safe applying procedures as described in the crisis management plan
- report the incident to the local law enforcement authorities immediately
- investigate and evaluate the situation applying discipline measures as per the student handbook. In addition, he or she will contact the parent/guardian. The principal will notify the district office.
- report the incident to the Illinois State Board of Education through the Student Incident Reporting System

2. Procedure for reporting all incidents of battery committed against teachers, teacher personnel, administrative personnel or education support personnel to the local law enforcement authorities:

Staff members will be instructed on the first day of teacher in-service to report incidents of battery committed against teachers, teacher personnel, administrative personnel or education support personnel to a supervisor immediately. If necessary, staff will complete an accident report and submit it to the supervisor.

Upon Notification of an incident, the supervisor will:

- investigate and evaluate the situation applying discipline measures as per the student handbook and contact the parent/guardian
- ensure that the accident report is completed
- ensure that the staff member involved is seen by the school nurse or if necessary seeks medical treatment

- report the incident to the local law enforcement authorities immediately and to the Department of State Police’s Illinois Uniform Crime Reporting Act no later than 3 days after the occurrence of the attack
- report the incident to the Illinois State Board of Education through the Student Incident Reporting System (SIRS)

3. Procedure for reporting all drug related incidents occurring in a school or on school property to the local law enforcement authorities immediately and to the Department of State Police in a form, manner, and frequency as prescribed by the Department of State Police.

Staff members will be instructed on the first day of teacher in-service to report incidents of any drug related incidents occurring in a school or on school grounds immediately to the Principal’s office.

Upon Notification of an incident, the Principal will:

- ensure that the building is secure, and students are safe applying procedures as described in the crisis management plan if necessary
- report the incident to the local law enforcement authorities immediately
- investigate and evaluate the situation applying discipline measures as per the student handbook. In addition, he or she will contact the parent/guardian. The principal will notify the district office.
- report the incident to the Illinois State Board of Education through the Student Incident Reporting System (SIRS)

Acknowledgement Form

- ❖ I hereby acknowledge I have been made aware that the **District Policy Handbook** is available on the district's website and I have been instructed on how to access this site. Furthermore, I know how to access my **school's staff handbook**. I understand that I am responsible for reviewing these policies and will become familiar with all of the policies and will become familiar with all of the policies, which relate to my employment and will refer to these policies as needed.
- ❖ I hereby acknowledge I have been made aware that the **Parent/Student Handbook (grades K-5) or the Student Handbook (grades 6 -8) and (9-12)** is available on the school website and I understand how to access the handbook. I understand that I am responsible for reviewing these policies and will become familiar with all of the policies, which relate to my employment and will refer to these policies as needed.

Instructional Resources - Telecommunications/Acceptable Use Policy

- ❖ I understand and will abide by the above **Acceptable Use Policy**. I understand that the District and/or its agents may access and monitor my use of the Internet, including my e-mail and downloaded material, without prior notice to me. I further understand that should I commit any violation, my access privileges may be revoked, and school disciplinary action and/or appropriate legal action may be taken. In consideration for using the District's electronic network connection and having access to public networks, I hereby release the School District and its Board members, employees, and agents from any claims and damages arising from my use of, or inability to use the Internet.

Special Education

I understand that an individualized education plan is a legal document. It is my responsibility to follow the IEP that is developed and written by the team. All questions pertaining to the IEP should be addressed to the special education case manager, special education administrator, Principal and/or Assistant Principal, and Superintendent.

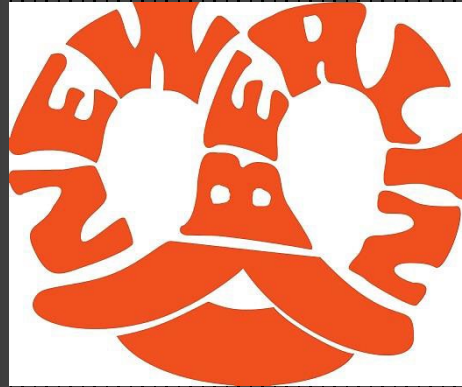
504

I understand that a 504 plan is a legal document. It is my responsibility to follow the 504 plan that is established by the team. All questions pertaining to the 504 plan should be addressed to the Principal and/or Assistant Principal, and Superintendent.

Employee Name (please print)

Employee Signature

Date



SUPPORT STAFF HANDBOOK

2022-2023

Updated: August, 2022

COMMUNITY UNIT SCHOOL
DISTRICT #16
600 N CEDAR STREET
NEW BERLIN IL 62670
(217) 488-2040
(217) 488-2043

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INTRODUCTION

The purpose of this handbook is to provide a source of information that can be quickly consulted regarding policies, procedures, rules and regulations that relate to working conditions for non-certified employees of New Berlin Community Unit School District #16.

This handbook is not intended to be the final document regarding matters of concern for non-certified employees. It does contain selected information in the forms of direct quotes and summaries from the Board Policy Manual, legislative enactments, and other sources, to make the information more readily available. Persons seeking more detailed information should refer to the above.

If you cannot find answers to your questions in this handbook, or in the Board Policy Manual, please consult with your supervisor to obtain the desired information.

AT-WILL EMPLOYEES

These policies and procedures establish employment guidelines only; they do not establish an employment contract. Management reserves the right to unilaterally modify and change both policies and guidelines. This school district recognizes and supports that the terms, conditions and duration of employment is all at will.

New Berlin CUSD #16 is an Equal Opportunity Employer and Educator who fully and actively supports equal access for all people regardless of race, color, gender, sexual orientation, age, national origin or disability.

PART I – ORGANIZATION

BOARD OF EDUCATION

Stephanie Neuman – President

Holly Kotner – Vice-President

Jenny Mann – Secretary

Josh Beard

Bridget Williams

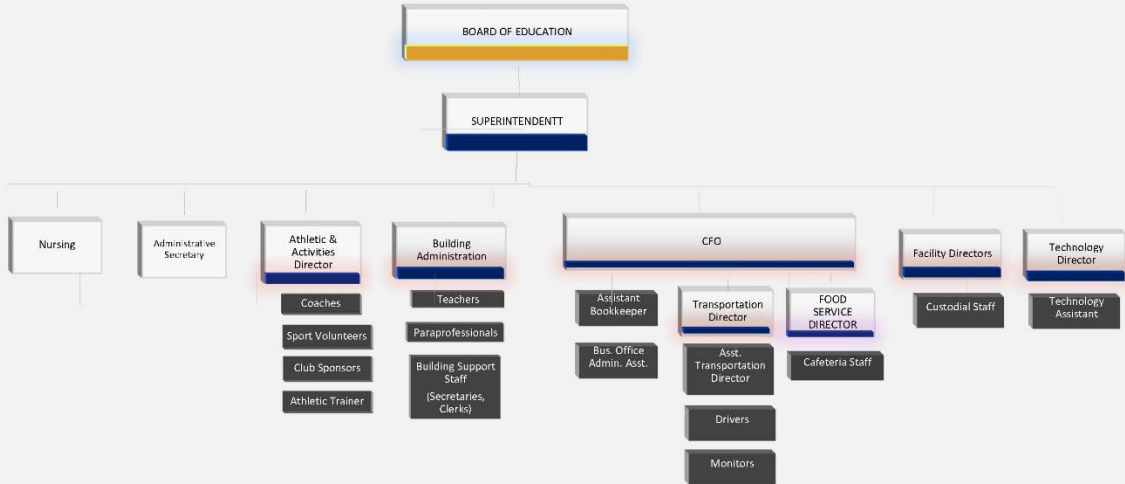
Chris Gordon

Bill Marr

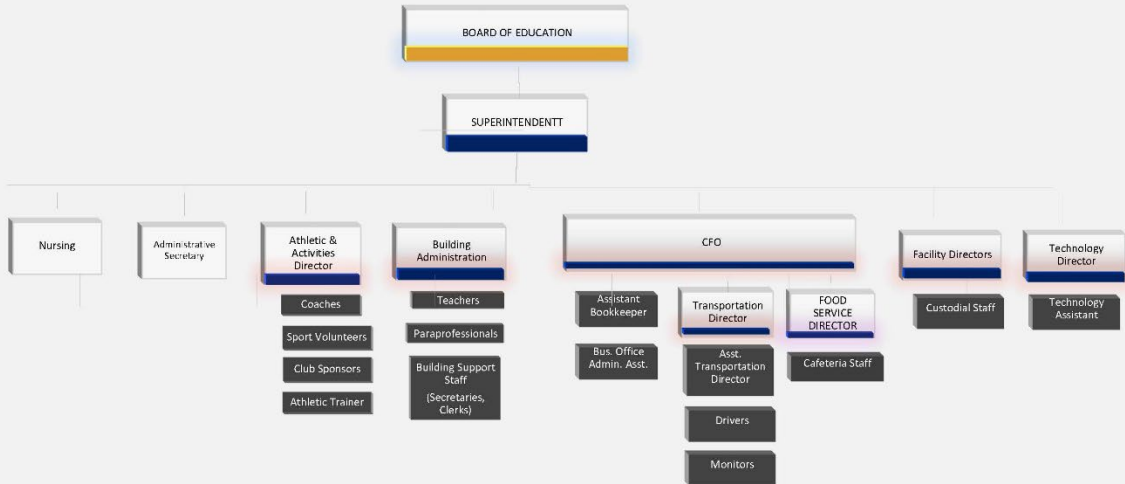
ORGANIZATIONAL CHART

1

NEW BERLIN CUSD #16 ORGANIZATIONAL CHART



NEW BERLIN CUSD #16 ORGANIZATIONAL CHART



COMPLAINTS AND CHAIN OF COMMAND

Parents are often discouraged when they attempt to communicate with the superintendent and school board members and are sent back to building-based officials in order to resolve a problem their child may be experiencing in school. To prevent that frustration, parents can become informed about the “chain of command”, or where to begin the communication sequence regarding their problem or concern.

Many parent and community questions are easily and completely answered by communicating directly with the educator in charge of the class or program. Each situation should first be addressed at whatever level the initial action was taken before taking it to the next level. This document does not supersede any employee’s or citizen’s right to contact Board members directly. However, whenever a complaint is made directly to the Board as a whole or to a Board member as an individual, it will be referred to the administration for study and possible solution.

1. *On Matters Involving Instruction /Curriculum*

- a. Classroom Teacher
- b. Principal
- c. Superintendent
- d. Board of Education

2. *On Matters Involving Student Discipline*

- a. Classroom Teacher
- b. Assistant Principal
- c. Superintendent
- d. Board of Education

3. *On Matters Involving Athletics or Extra-Curricular Activity*

- a. Coach or Club Sponsor
- b. Athletic Director
- c. Principal (eligibility/student discipline)
- d. Superintendent
- e. Board of Education

4. *On Matters Involving Facilities /Grounds/Building*

- a. Facilities Directors
- b. Superintendent
- c. Board of Education

5. *On Matters Involving Transportation*

- a. Transportation Director
- b. Assistant Principal (for student discipline)
- c. Chief Financial Officer
- d. Superintendent
- e. Board of Education

- 6. *On Matters Involving Cafeteria and Food Service***
 - a. Food Service Director
 - b. Assistant Principal (for student discipline)
 - c. Chief Financial Officer
 - d. Superintendent
 - e. Board of Education

- 7. *On Matters Involving Student Health & Wellness***
 - a. School Nurse
 - b. Principal
 - c. Superintendent
 - d. Board of Education

- 8. *On Matters Involving Administration and All Other District Directors***
 - a. Superintendent
 - b. Board of Education

- 9. *On Matters Involving Superintendent***
 - a. Board of Education

PART II - EMPLOYMENT

A. Criminal Background Investigation

This is required prior to employment. Each applicant for employment in the school system shall authorize in writing a background investigation to determine if he or she has been convicted of certain criminal or drug offenses.

B. Employee Rights

Employees have certain rights guaranteed by the state and federal constitutions, state and federal statutes, or School Board Policy. Included are:

- 1) Title II of the Americans with Disabilities Act;
- 2) Title IV of the Education Amendments of 1972;
- 3) Section 504 of the Rehabilitation Act of 1973;
- 4) Claims of sexual harassment under the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972; and
- 5) Family and Medical Leave Act.
- 6) Review Asbestos Report
- 7) National Origin/Immigration status

Copies of the above are on file in the Superintendent's Office.

Complaints should be filed in accordance with School Board Policy.

C. Employment At-Will –Initial Employment

Employment with the District is at-will, meaning that employment may be terminated by the District or the employee at any time, without restriction.

D. Immigration Investigation

All newly hired employees must complete an Immigration and Naturalization Service Form I-9 no later than three business days following their first working day.

E. Line and Staff Relations

Each employee is responsible to only one immediate supervisor. If this is not possible, the employee shall understand to whom he is responsible for which functions.

All matters of concern are to be communicated to the immediate supervisor, except in the most unusual situations.

F. Outside Employment – Conflict of Interest

Employees shall not engage in any other employment or in any private business during required work hours and additional times necessary to fulfill appropriate assigned duties. Work for the district must take precedence over other employment opportunities.

G. Overtime Compensation

Overtime compensation is consistent with the Fair Labor Standards Act, Board Policy and District Administrative Procedures.

H. Performance Evaluation

The supervisor of each full-time employee will complete each year a performance report for the employee in his/her area of responsibility. A copy shall be given to the employee and discussed with him/her. The original shall be signed by the employee and filed with the Superintendent. The supervisor of each part-time employee will complete, when appropriate, a performance report for the employee's record.

I. Seniority List

Each year a seniority list, by categories, shall be established for full-time educational support personnel. If the decision is made to reduce or eliminate educational support service, the seniority list shall determine the progression of dismissals.

J. Sexual Harassment (Employees)

The practice of sexual harassment is contrary to law and the policy of the school district. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Employees who engage in conduct, which constitutes sexual harassment, shall be subject to disciplinary action including termination for cause.

Any person who believes himself or her to be subject to sexual harassment may file a written complaint with the Superintendent who shall promptly conduct an investigation. The investigation may include interviews and hearings at which testimony is taken under oath. At the conclusion of the investigation and in no case later than 30 days from the filing of the complaint, the Superintendent shall make a written report of his conclusions and recommendations, which he may have drawn. In the event the person presenting the complaint is dissatisfied with the recommendation and conclusion of the Superintendent, an appeal may be taken to the Board of Education. An appeal shall be filed with the Board of Education by service at the Board office. The Board of Education shall uphold or reject the Superintendent's recommendations and conclusions within 30 days of the presentation of the appeal.

Nothing herein shall operate to affect any rights granted any person by other statutes.

The hearing shall commence by the district presenting through direct testimony and evidence those facts upon which the proposed action is based. In addition, the district shall present any portions of

the employee's record, which shall have bearing upon the proposed action. All testimony shall be under oath and shall be subject to cross-examination.

Following the presentation of the testimony and evidence in support of the proposed action, the employee shall have an opportunity to present testimony, evidence, and argument bearing upon the charge and the proposed action.

At the close of the evidence, or as promptly thereafter as may be practicable, the person conducting the hearing shall make a written decision, which shall include findings of fact upon which the decision is based.

K. Termination of Employment

- 1) Resignation - Employees shall provide two weeks notice of termination.
- 2) Involuntary termination - The School Board may terminate an at-will employee at any time, with or without cause.
- 3) Retirement - An employee planning to retire should notify his or her supervisor at least two months before the retirement date.

L. Recognition for Service

Upon retirement or death, employees who began IMRF participation prior to January 1, 2012, shall receive a single payment in the amount of one hundred (100) dollars for each year of service. In the event any recognition of service payment in conjunction with any retirement bonus (if applicable) would trigger a penalty or accelerated payment to IMRF, the recognition of service and/or the retirement bonus shall be reduced so that no penalty or accelerated payment is owed by the District. This recognition of service payment is not available to employees beginning IMRF participation January 1, 2012 or after. This payment shall be paid after 75 days from the last paycheck received by the employee for services rendered.

M. Time Schedules - Employment Year

1) TWELVE MONTH EMPLOYEES

These employees work daily (Monday through Friday) except holidays and earned vacation time.

On days when school is canceled due to emergency situations and certified personnel are not required to work; hourly employees will not be required to work. Emergency situations that would cause severe damage to the buildings, if certain personnel are not on duty, may require non-certified employees to work on holidays or when certified personnel are not required to work due to conditions.

Custodians and maintenance personnel work a forty (40) hour week.

Administrative office personnel work from 8:00 a.m. until 4:00 p.m. Summer hours may be adjusted at the discretion of the Superintendent.

2) **NINE AND ONE-HALF MONTH EMPLOYEES**

These employees begin five (5) working days prior to the beginning of the school calendar year; work the school calendar year, and five (5) working days after the close of the school year. The school calendar is defined by teacher work days which are equal to 180 days. Therefore, nine and one-half month employees work 190 days per year. A calendar to demonstrate the work schedule will be created annually by the Business Office.

On days when school is canceled due to emergency situations and certified personnel are not required to work; these employees will not be required to work.

3) **TEN-MONTH EMPLOYEES**

These employees begin ten (10) working days prior to the beginning of the school calendar year; work the school calendar year and ten (10) working days after the close of the school year. The school calendar is defined by teacher work days which are equal to 180 days. Therefore, ten month employees work 200 days per year. A calendar to demonstrate the work schedule will be created annually by the Business Office.

On days when school is canceled due to emergency situations and certified personnel are not required to work; these employees will not be required to work.

4) **SCHOOL YEAR EMPLOYEES**

These employees work the school calendar year unless otherwise specified. A calendar to demonstrate the work schedule for each discipline will be created annually by the Business Office.

5) **SUMMER EMPLOYMENT**

Employees who accept summer positions do not qualify for 12-month benefits. Summer employment does not extend a contract for 12 months since it is out of the regular school year category.

6) **HOURLY EMPLOYEES**

Hourly employees work as needed with the approval of the Supervisor or Superintendent.

7) **EMERGENCY DAYS**

Supervisors shall inform each employee whether he/she is needed during an emergency day.

8) **SUPERVISORY STAFF**

The work day and work year shall be similar to other personnel except that it is understood that supervisors are employed for specific tasks, and they are expected to work beyond the regular workday in order to accomplish such tasks when necessary.

N. Unemployment Benefits

Employees shall be ineligible for unemployment benefits during an established and customary vacation period or holiday recess, if the employee works in the period immediately before such times, and there is a reasonable assurance that the employee will work immediately after such time.

O. Workers' Compensation

Employees are protected against financial loss in case of injury, certain types of disease, or death incurred in an employment related situation under the provisions of the Illinois Workers' Compensation Act.

P. Full/ Part-time Employees

A full-time employee is an employee that works (12 months with 30 hours of work per week) or works 35/40 hours per week for nine months in same department.

Part-time employees work less than 35 hours per week.

To qualify for Illinois Municipal Retirement Fund (IMRF) an employee must work 600 hours per year.

To qualify for school hospitalization insurance, an employee must work 30 hours per week.

PART III – GENERAL INFORMATION

A. Retirement Bonus

The Board will provide a retirement bonus to Educational Support Staff who began IMRF participation prior to January 1, 2012, and retire into IMRF according to the following schedule:

With Early Retirement Option Costs:	Without Early Retirement Option Cost:
15 years within District-\$1,000	15 years within District - \$6,000
20 years within District-\$1,500	20 years within District - \$7,000
25 years within District-\$2,000	25 years within District - \$8,000
30 years within District-\$3,000	30 years within District - \$9,000

In the event any retirement bonus in conjunction with any recognition of service bonus would trigger a penalty or accelerated payment to IMRF, the retirement bonus and/or the recognition of service bonus shall be reduced so that no penalty or accelerated payment is owed by the District. This retirement bonus payment is not available to employees beginning IMRF participation January 1, 2012 or after. This payment shall be paid after 75 days from the last paycheck received by the employee for services rendered.

B. Asbestos Report

PUBLIC NOTIFICATION

This notice is to inform building occupants of the potential hazard and locations of asbestos containing materials. It has been determined by the Illinois Department of Public Health and the US Environmental Protection Agency that asbestos is a potential health hazard, and precautions should be taken to avoid disturbing any asbestos containing materials. Materials containing asbestos have been found in the New Berlin Jr./Sr. High School. Any evidence of disturbance or change in condition will be documented in the Management Plan as required by law. Cleaning and maintenance personnel who recognize the danger of asbestos are taking special precautions during their work to properly guard against disturbance of the asbestos containing materials. All asbestos containing materials are inspected and evaluated periodically and additional measures will be taken when needed to protect the health of building occupants. This information was distributed to all building occupants by:

Reliable Environmental Solutions, Inc.
4211 Westgate Dr.
Springfield, IL. 62711

C. Pesticide Notification Registration

District #16 has an Integrated Pest Management (IPM) Policy which incorporates building maintenance, sanitation, physical barriers and as a last resort, the most safe, effective means of pesticide. Although we have no intention of spraying or fogging with pesticides, in the unlikely event this is found to be necessary, we are creating a voluntary registration. By putting your name on this list, you are asking to be notified two days before an airborne pesticide application. In the event of an extreme emergency and pesticides must be used immediately, we will notify you as soon as possible. Contact the superintendent's office if you wish to be added to the registry.

D. Communicable and Chronic Infectious Disease

Employment in the District is contingent upon satisfactory results of a physical examination and freedom from communicable and chronic infectious disease in accordance with the law.

E. Conferences and Visitations

After application to, and with the approval of the Superintendent or his/her designee and the immediate supervisor, support staff members may be released with full pay to attend conventions, workshops, conferences, visit exemplary programs and participate in other work-related growth activities.

F. Credit Information

When credit information is requested by telephone, the only information that may be provided is verification of employment. If the request is by mail, information may be released with the written permission of the employee about whom the information is requested. An administrator must also sign the released material.

G. Gifts

Only those gifts, grants or donations deemed acceptable by the Board of Education shall be accepted and shall become the property of the school district.

Individual employees may not accept gifts or donations, which are related to their employment in the school district.

H. News Media Relations

Employees of the District should channel outgoing information to the media through the Superintendent's Office.

Employees of the District should not discuss District related topics with the Press without approval of the immediate supervisor.

I. Athletic Passes

Staff members shall use their staff ID as a pass to all school activities, with the exception of student money-making activities and tournament events. This will entitle employee and one guest admittance.

J. Political Activities

Employees have the right to engage in partisan political activities of their choice, but no employee shall engage in such activities during the hours of employment in the District.

K. Public Complaints

The complainant shall be encouraged to first bring the complaint to the employee concerned, and to the attention of the immediate supervisor. If the issue is not resolved, the complainant can refer the issue to the Superintendent. If the issue is still not resolved, the complainant may request a closed meeting of the School Board for the purpose of reviewing the Superintendent's decision.

L. Purchase of Goods, Services and Equipment

All such purchases must be made in accordance with school district procedures, which detail the purchasing, receiving, and disbursements of supplies, equipment and services.

M. School Equipment, Use of

School equipment must not be used for any purpose other than school use.

N. Solicitations

Solicitations for donations and sales in a school building are prohibited unless recommended by the Building Principal and approved by the Superintendent.

O. Tobacco, Drugs, Alcohol

All District workplaces are drug- and alcohol-free workplaces. All employees are prohibited from engaging in any of the following activities while on District premises or while performing work for the District:

1. Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance, or being under the influence of any illegal substance or any detectible use of any illegal substance regardless of when or where the use occurred.
2. Distribution, consumption, use, possession, or being under the influence of an alcoholic beverage; being present on District premises or while performing work for the District when alcohol consumption is detectible, regardless of when and/or where the use occurred.
3. Possession or use of medical cannabis.

An employee who violates this policy may be subject to disciplinary action, including termination. Alternatively, the School Board may require an employee to successfully complete an appropriate drug- or alcohol-abuse rehabilitation program.

The Board shall take disciplinary action with respect to an employee convicted of a drug offense in the workplace within 30 days after receiving notice of the conviction.

P. Vendor Relations

Employees shall have no pecuniary interest in the sale, proceeds, or benefits of any books, apparatus or furniture used or to be used in any school in the District.

Q. Lunch Program

School breakfast and lunch will be served daily and is available to all staff members. Meals should be paid for in advance either by check made payable to CUSD #16 or by credit card in the school office. Each staff member will be given a lunch card/ID which can be scanned by the computer. All accounts must have a positive balance at all times.

PART IV – HOLIDAYS, LEAVES, VACATIONS

A. Court Duty

The District shall pay full salary during the time an employee is on jury duty. An employee shall give the District a five day notice of impending jury duty, if possible. The District shall pay full salary during the time an employee serves as a witness upon trial or has his or her deposition taken in any school related matter pending in court.

Court duty remuneration, less mileage and meal expenses, shall be reimbursed to the District for those working days when the employee is on court duty.

B. Holidays

Full time, 12-month employees will be paid for but will not be required to work on the holidays listed below unless the holiday is waived in the official school calendar and considered a day of student attendance. In the event that the holiday is waived and used for student attendance, the full time, 12-month employee will be expected to work on that holiday and will be given an extra vacation day to use at another time, with approval of his/her supervisor, during the fiscal year. That extra vacation day will be allocated immediately following the waived holiday. Unless the District receives a waiver or modification of The School Code pursuant to Section 2-3.25g, allowing it to schedule school on a holiday listed below, District employees will not be required to work on the following holidays:

Day before New Year's	Labor Day
New Year's Day	Columbus Day
Martin Luther King Jr. Birthday	Veteran's Day
Abraham Lincoln's or President's Day	Thanksgiving Day
Casimir Pulaski's Birthday	Day after Thanksgiving
Good Friday	Day before Christmas
Memorial Day	Christmas Day
Juneteenth National Freedom Day	
Independence Day	

If the Fourth of July falls on Saturday, the employee will take Friday as the holiday. If it falls on a Sunday, the employee will take Monday as the holiday.

In the case of an emergency or for the continued operation and maintenance of school facilities or property, the District may require non-certified school district employees to work on a legal school holiday.

Full time employees will be eligible for full day pay at their straight time rate, provided they meet the following requirements:

- 1) The employee must work within the payroll period during which the holiday occurs,
- 2) The employee must work the last scheduled working day before the holiday and the first

scheduled work day after the holiday, unless on approved vacation or approved personal leave. If a sick day is used, the employee must have a doctor's office notice.

C. Personal/Special Leave

First year employees will receive (1) personal day immediately upon employment. Employee will then be on a nine (9) month probation and receive a second personal day after four (4) months of employment accumulating two (2) personal days a year.

Employees shall be given two (2) personal leave days per year by the School Board subject to the following conditions:

- 1) Employees can accumulate to up to 4 days of personal leave. Any days not used in excess of 4 will be transferred to sick leave.
- 2) No reason need be given if **five working days** prior notice is given.
- 3) With **less than five working days** notice, written reason must be given to the immediate supervisor.
- 4) No days may be used immediately before or immediately after a holiday unless prior approval is granted by the immediate supervisor.
- 5) **There are times during the year when personal days may be denied by the supervisor/superintendent due to the amount of workload. Employees should have alternate dates for personal days planned. No more than two (2) employees may be gone at the same time in their department unless approved by the supervisor.**
- 6) Teachers' Aides must follow the guidelines listed above. In addition to the above, aides will also go by the guidelines listed below:
 - a) Personal Day requests must be made to appropriate principal forty-eight (48) hours in advance of the day for which the leave is requested.
 - b) No personal leave will be granted for an absence occurring the day before or after the following holidays: Thanksgiving, Christmas, Easter or during the first 5 student attendance days or last 5 student attendance days of the school year or a day on which semester tests are scheduled.
 - c) No more than 2 aides, district wide, may be granted personal leave on the same day.
- 7) All non-certified employees will be allowed to use Personal Time in hours instead of ½ or full day increments.

D. Religious Holidays

An employee may request time off to observe a religious holiday. The supervisor will make every effort to grant the request if the employee makes the request at least **five (5) working days** before the absence. The employee may use earned vacation time, holiday time or personal leave. The employee may elect deferred work consistent with the school district's operational needs.

E. Sick Leave

All non-certified employees will receive one (1) **sick day per month**, accumulating ten (10) days per year. Twelve-month employees will receive 13 days per year.

Employees (full or part-time) who are eligible to participate in IMRF under the 600 hour standard or other such IMRF standards shall be entitled to no less than ten (10) days sick leave at full pay each year. Part-time employees will receive sick day pay equivalent to their regular work day.

The following scale describes the “years of service” increases which are available to employees working 600 hours or 9 months as follows: (Employees with contracts exceeding 9 months will receive an additional day of sick leave for each additional month worked)

After 5 years of services.....	11 days
After 10 years of service	13 days
If 80 days are accumulated after 15 years of service	15 days
If 110 days are accumulated after 20 years of service.....	17 days
If 140 days are accumulated after 25 years of service.....	20 days

Sick leave benefits represent time accrued and available for absence from work due to personal illness, injury, or medical appointment. Pursuant to the Employee Sick Leave Act, a portion of the sick leave may be used for absences due to an illness, injury, or medical appointment of the employee’s child, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, or step-parent. The Superintendent and/or designee shall monitor the use of employee’s sick leave.

All non-certified employees will be allowed to use their Sick, Personal, and Vacation time in hours instead of ½ or full day increments.

After three (3) consecutive days absent for personal illness, or as may be deemed necessary in other cases, the employee may be required to furnish a note from the employee’s healthcare provider confirming the need for absence from work and providing information on an expected return date.

F. Leave of Absence

The District offers several different categories of leaves, including, but not necessarily limited to:

- Personal Leave of Absence
- Military Leave
- Family and Medical Leave

Because of the uniqueness of each type of leave, employees are directed to the Human Resources Director for any questions or for additional information.

There are some general guidelines that apply to all types of leave. All leaves of absence must be

requested and/or designated and approved in writing. Subject to any applicable legal standards, requests for some leaves of absence will be evaluated based on the employee's work record, length of service, and the District's operating needs. Misrepresenting reasons for applying for or receiving a leave of absence may result in disciplinary action up to and including termination of employment.

All leaves of absence are unpaid unless otherwise indicated or unless the employee qualifies for some other benefit. The District requires employees to first use accrued and applicable paid time off (including vacation time) during a period for which leave is requested. Paid time off shall be used in the order of sick leave, personal leave, and then vacation.

If required by federal or state law, the District will continue to provide health or other insurance that was provided the employee before the leave of absence and which is provided to other employees. During any leave of absence, employees remain responsible for the employee's share of the premiums and any dependent premiums for those insurance benefits. If the employee fails to pay his/her portion of the insurance premiums for three (3) consecutive months, the District will terminate coverage.

If the period of approved leave exceeds the available paid time off (sick, personal, and vacation), any length of service accrual and any benefits accrual will be suspended and will resume upon the employee's return to active employment with the District. Employees will not lose any length of service or accrued benefits because of time off work for an approved leave of absence in accordance with applicable law.

Employees on leave are required to keep the District's Human Resource Officer updated as to their status and intent to return to work. Employees are required to provide reasonable advance notice of the intended return to work date. If the leave of absence is for the employee's own serious medical condition, the District reserves the right to require a fitness for duty certification from the employee's treating healthcare provider before the employee returns to work.

Employees returning from an approved family and medical leave (granted pursuant to the FMLA) or other statutory leave, will be granted reinstatement according to the law's requirements. As to non-FMLA or other statutorily mandated leaves, an attempt will be made to return the employee to their same position or one of comparable pay and status unless business or other circumstances make it unreasonable or difficult to do so.

Leave of absence are subject to change at any time, either to meet operating needs of the District or to comply with any changes in law.

Failure to follow any requirements of the leave or to return to work following the expiration of the approved leave of absence will be considered voluntary resignation. All rights to reinstatement cease if the employee does not return to work at the end of the approved leave.

Employees may not use a leave of absence to work at another job without the express written consent of the Superintendent. Should this occur without permission, the employee will be subject to

discipline, up to and including termination.

Exceptions to any leave policy may be available to those qualified employees subject to the provisions of the Americans with Disabilities Act and the provisions of the Illinois Human Rights Act relating to pregnancy. Individuals with a disability or pregnancy related issue who wish to request an exception to this policy in order to accommodate a disability or pregnancy should contact the Human Resources Director for the District.

a. Personal Leave of Absence

Employees may request a personal leave of absence for a variety of personal reasons. Whether an employee is granted a personal leave will depend upon a variety of factors, including: job requirements, availability of a temporary replacement, projected ability of the District to return the employee to his/her position at the expiration of leave, and any other considerations that are relevant at the time.

Unless otherwise required by law, reinstatement following a personal leave of absence is not guaranteed. The District will attempt to place the returning employee in the former position or to one with comparable status and pay, however this is not guaranteed.

Unless otherwise required by law, personal leaves of absence are limited to a one (1) month duration. Additional one (1) month time increments may be granted, but in no case may personal leave of absence extend beyond a total of six (6) months.

Whether to grant a personal leave of absence and whether to reinstate a returning employee to the same or similar position are matters left to the sole and sound discretion of the District.

b. Military Leave

Employees who are inducted into the U.S. Armed Forces or who are reserve members of the U.S. Armed Forces, will be granted leaves of absence for military service, training, or other obligations in compliance with state and federal laws. These employees may use accrued vacation time but are not required to do so.

At the conclusion of the leave, employees generally have a right to be reinstated to the same position held prior to the leave or to one with equivalent seniority, pay and benefits, so long as the employee has followed the legal requirements to qualify.

Employees should notify their immediate supervisors and the Human Resources Director as soon as they become aware of the military obligation.

c. Family and Medical Leave

FMLA allows eligible employees to take up to 12 work weeks unpaid, job protected leave in a

12-month period for the following reasons: the birth of a child; the placement with an employee of a child for adoption or foster care, first year care of a child following birth or placement for adoption or foster care, the need to care for a spouse, child, parent, or parent-in-law who has a serious health condition, an employee's own serious health condition, or a qualifying exigency arising as a result of a spouse, child, parent, or parent-in-law on active military duty or being notified of impending call or order to active duty in the Armed Forces.

FMLA allows eligible employees to take up to 26 work weeks of unpaid job projected leave in a 12-month period to care for a spouse, child, parent, parent-in-law, or next of kin who is a member of the Armed Forces who has a seriously injury or illness incurred by the service member in the line of active duty (military caregiver leave).

There may be times when the District becomes aware that an employee is or may be eligible for leave for an FMLA-qualifying reason and the employee has not requested FMLA leave. When this occurs, the District will notify the employee, detail the employee's responsibilities and explain any consequences for failing to meet those responsibilities. When the District has sufficient information to determine whether leave qualifies for FMLA coverage, it will notify the employee within five (5) business days (unless extenuating circumstances exist) of making that determination whether the leave is or is not designated as FMLA leave and the amount of leave that will be counted against the employee's entitlement.

Under the **Military Exigency Leave**, the District will grant a qualifying employee leave up to 12 weeks in a 12-month period because of "any qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

A **qualifying exigency** is defined as follows:

- Short notice deployment of seven (7) or less calendar days prior to the date of deployment;
- Military events and related activities (in advance of and deployment, including family support assistance programs information briefings);
- Childcare and school activities (*e.g.*, to arrange for alternative childcare, provide childcare on an urgent, immediate need basis or to attend meetings at a school or daycare facility);
- Financial and legal arrangements (*e.g.*, to prepare and powers of attorney, enroll for military health care, or to prepare a will or living trust);
- Counseling (non-medical, for oneself, the service member, or a child of the service member);
- Rest and recuperation (up to five (5) days for each);
- Post-deployment activities (to attend ceremonies and briefings a period of 90 days or to address issues arising from the service member's death); and
- Additional activities agreed to by the District and employee.

Under the **Military Caregiver** provisions, the District will grant military caregiver leave to eligible employees for up to 26 weeks in a 12-month period to an eligible employee who is a spouse, son, daughter, parent, parent-in-law, or next of kin of a covered service member, who is recovering from a serious illness or injury sustained in the line of duty on active duty, in order to care for the service member. **Next of kin** is defined as the nearest blood relative of a service member. **Serious illness or injury** is defined as one that renders the service member medically unfit to perform the duties of a member's military position. This **covered service member** is one who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list due to the injury or illness. An eligible employee is entitled to this Military Caregiver Leave intermittently or continuously, but only during a single 12-month period. If you take this Military Caregiver Leave, any leave you have used of your 12-week allotment or other FMLA leave will be deducted from the 26-week period.

The 12-week or 26-week period is measured beginning on the first date the employee commences FMLA leave. The District recognizes the 12-month period as January 1 through December 31.

The District's policy requires the employee taking FMLA leave use accrued sick, personal, and vacation leave, depending on the circumstance, **concurrently** with the FMLA leave. This means that, under certain circumstances, an employee may receive pay for all or part of an approved FMLA leave. For example, if the employee required FMLA leave for a medical-related condition, the employee will be required to use all sick leave, then personal leave, and then vacation leave during the duration of the FMLA leave. If FMLA leave continues after exhausted of paid leave, then the FMLA leave will be unpaid.

To be eligible under this policy, the law requires that an employee must have been employed by the District for at least 12 months and have worked at least 1,250 hours during the 12-month period immediately preceding the leave. Under certain circumstances, leave may be taken all at once, intermittently, or on a reduced schedule basis. Arrangements should be discussed with the employee's supervisor and Human Resources Manager and additional documentation indicating the medical necessity may be required.

If both spouses are employed by the District, the total combined leave time may be limited to 12 weeks in a single 12-month period for the birth of a child or the placement of a child for adoption or foster care, to care for the employee's parent with a serious health condition, or because of a qualifying exigency related to military leave. However, each employee may use up to 12 weeks of FMLA leave during the 12-month period if the leave is to care for the employee's spouse or child with a serious health condition or for the employee's own serious health condition. If both spouses are employed by the District, they are limited to a combined total of 26 work weeks during the single 12-month period if leave is military caregiver leave or a combination of military caregiver leave and other family leave.

If the employee takes any leave covered by this FMLA policy, coverage under the District's group health insurance plan will be continued. During the FMLA leave, the employee will be responsible for his or her portion of the insurance premium just as if he or she were continuing on active employment. Vacation, sick, and personal time does not accrue during an unpaid

leave under this policy.

An employee who foresees the need for leave under the FMLA must notify his or her supervisor and the Human Resources Director in writing as early as possible. Such notice must be at least thirty (30) days in advance of the start of the planned leave, unless impracticable under the circumstances, in which case, the employee must provide written notice as early as the circumstances permit, generally within no more than two (2) days of learning of the need for leave.

If the requested leave is to care for a spouse, child, parent, or parent-in-law who has a serious health condition or to care for a covered service member, the employee may be required to file with the Human Resources Director, in a timely manner, a healthcare provider's certification providing information as to the condition, probable duration of the condition, and the medical facts regarding the condition. The District may request subsequent certifications during the course of the leave if circumstances warrant.

The District will ordinarily return an employee to the same position or to a position equivalent to the one held before the employee went on leave unless the employee is a "key employee." Although the job an employee returns to may not be identical, it will offer equivalent working conditions, pay, and benefits.

G. Unused Sick Leave

Employees who retire into the IMRF System will be paid an amount equal to \$5.00 per unused accumulated sick day up to a maximum of (240) days. Days used to purchase retirement years will not be reimbursed. Sick days accumulated past the (240) cannot be used for purchase of retirement years or reimbursement from the district. Only days granted in this school district will be reimbursed. This payment shall be paid after 75 days from the last paycheck received by the employee for services rendered.

H. Bereavement

Three (3) paid days will be granted for reason of bereavement for death of each immediate family member. These days will not be charged against the employee's sick leave or personal leave. "Immediate family" shall include parents (biological, step or adopted), spouse, domestic partners, brothers, sisters, children (biological, step, adopted, or foster), grandparents, grandchildren, parents-in-law, brothers and sisters-in-law, daughters-in-law, sons-in-law, grandparents-in-law, nieces, nephews, aunts, uncles, first cousins, legal guardians, and any legal dependent.

I. Vacation

After one (1) year of continuous employment, year-round employees shall be eligible for paid vacation days. Since the fiscal year runs from July 1 to June 30, vacation days are generally awarded on July 1 of each year according to the following schedule:

After one (1) year continuous employment 10 working days
After ten (10) years continuous employment 15 working days
After fifteen (15) years continuous employment 17.5 working days
After twenty (20) years continuous employment 20 working days

For those employees who begin employment on any day other than July 1, upon attaining their one-year anniversary, those employees will earn a pro-rated number of vacation days based on the number of months between their anniversary date and the start of the next fiscal year (July 1). The pro-ration will be based on a 10-day total number of vacation days. The above-schedule will commence therefore on the July 1 following the employee's first full year of employment.

If someone starts working mid-year, they must work a full year before they receive any vacation days.

For instance, the employee starts working on February 1st. When February 1st of the next year comes around, he/she will receive 10 days of vacation.

When July 1 of that year comes around, he/she will receive pro-rated vacation days - $.83$ per month ($10/12$) for 5 months = $5 \times .83 = 4.15 = 4$ days.

After that, every July 1st he/she will receive the vacation days coming to them for that year:

After 1 year – 10 days
After 10 years – 15 days
After 15 years – 17.5 days
After 20 years – 20 days

Vacation days earned in one fiscal year must be used by the end of the following 15 months or the employee will lose them. Confidential/Supervisors may carry over vacation for 1 year & 6 months before losing it. Employees terminating their employment are entitled to remuneration for the amount of vacation earned to the date of termination, provided they have been in the employ of the District for at least one year. Vacation remuneration shall be paid only when employment is terminated by the action of the School Board or by a two week notice in writing by the employee.

Requests for vacation should be submitted to the employee's supervisor for approval at least one (1) week in advance. Every effort will be made to meet the desires of the employee and the needs of the school system.

All non-certified employees will be allowed to use their Sick, Personal, and Vacation time in hours instead of $\frac{1}{2}$ or full day increments.

There are times during the year when vacations may be denied by the supervisor/superintendent due to the amount of workload. Employees should have alternate dates for vacation planned.

PART V – SAFETY

A. Building and Grounds Safety

All personnel share in the responsibility for observing and reporting hazardous conditions in the buildings or on the playgrounds to their immediate supervisor. Custodians play a key role in this respect.

B. School Bus Safety

Students shall be provided with instruction in safe bus riding practices each school year. The instruction shall include operation and use of the emergency door, windows (as means of escape) and fire extinguishers.

C. Work Related Injury

1. REPORTING OF ACCIDENTS

Employees are responsible for reporting accidents that occur on-the-job to their supervisor immediately on the day of occurrence. **If the situation is not an emergency, the employee should report to the school nurse for evaluation.** The employee is responsible for immediately filing an accident report with the supervisor, nurse and the district office. **Should an employee need non-emergency medical attention under workman's compensation, the employee needs to contact the Business Manager prior to the medical visit for the appropriate information needed prior to treatment.**

In case of an emergency, please go to a hospital or doctor's office. Contact the Business Office as soon as possible following the visit.

PART VI – CLOCKING IN & OUT ON COMPUTERS

A. Procedures and policies

- 1) **Each employee is responsible daily for the accuracy of their clocking in and out on the computer. Any changes or corrections made on your clocking in and out must be signed by the immediate supervisor.**
- 2) The supervisor in each department will supervise clocking in and out when necessary. The supervisor will be allowed to adjust clocking in and out when necessary. All hourly employees will be required to use computers to clock in and out.
- 3) **Only the individual employee can clock in or out. Clocking in or out for another employee is prohibited.**
- 4) **Employees are to clock in immediately before beginning work and immediately following the end of the scheduled work time. Failure to do so may result in pay loss as per recorded time sheets. Overtime must be approved by the supervisor.**
- 5) **A lunch break of at least 30 minutes must be clocked in and out. Employees are not allowed to skip lunch in order to leave early.**
- 6) **If an employee leaves during the day for reasons other than school related business, he/she should clock out and back in when they return and report it as personal/sick/vacation time.**
- 7) **School Emergency Closings**-If an emergency day arises and it is a danger for the employee to remain at work, employees will be allowed to leave early and receive pay for the hours worked. No penalty regarding vacation or personal days will be given. If a non-emergency school situation or closing occurs and the superintendent allows offices to close, it is at the discretion of the employee's supervisor to determine whether employees are to stay or go home. Employees will be paid for the amount of time worked as directed by the supervisor.
- 8) **EMERGENCY NEEDS PAY FOR 12 MONTH EMPLOYEES –**
- 9) **12 month employees will receive regular pay for an emergency day when they are not required to work. If they are notified by their immediate supervisor to work, employees will be paid in addition for those hours. Supervisors will develop a rotation list for emergency days.**
- 10) **If a 12-month employee is notified by his/her immediate supervisor to work, employee will be paid overtime compensation in addition to the regular pay for those hours. Supervisors will develop a rotation list for emergency days.**
- 11) **Without prior approval from a supervisor, no overtime will be paid.**

B. General Information

Only the hours worked will be paid.

Only twelve (12) month employees will receive holiday pay.

There will be no changes made in the IMRF procedures unless the 600 hours of service is not received.

Insurance premiums and other payroll deductions will be made during the months the employees receive a paycheck. **Deductions for employees that work and are paid less than 12 months will be distributed evenly among the dates that they are paid. Should employment terminate, adjustments will be made for any balance due or refund and employee will be given written notice of the adjustment(s).**

All vehicles used for transportation of students must be kept at the garage. Drivers will be allowed to remain on the clock to complete all preparation for the bus routes. This includes maintaining the log, pre-trip inspection, fueling, cleaning, etc.

Acknowledgement Form

- ❖ I hereby acknowledge I have been made aware that the **District Policy Handbook** is available on the district's website and I have been instructed on how to access this site. Furthermore, I know how to access my **school's staff handbook**. I understand that I am responsible for reviewing these policies and will become familiar with all of the policies and will become familiar with all of the policies, which relate to my employment and will refer to these policies as needed.
- ❖ I hereby acknowledge I have made aware that the **Parent/Student Handbook (grades K-5) or the Student Handbook (grades 6 -8) and (9-12)** is available on the school website and I understand how to access the handbook. I understand that I am responsible for reviewing these policies and will become familiar with all of the policies, which relate to my employment and will refer to these policies as needed.

Instructional Resources - Telecommunications/Acceptable Use Policy

- ❖ I understand and will abide by the above **Acceptable Use Policy**. I understand that the District and/or its agents may access and monitor my use of the Internet, including my e-mail and downloaded material, without prior notice to me. I further understand that should I commit any violation, my access privileges may be revoked, and school disciplinary action and/or appropriate legal action may be taken. In consideration for using the District's electronic network connection and having access to public networks, I hereby release the School District and its Board members, employees, and agents from any claims and damages arising from my use of, or inability to use the Internet.

Employee Name (please print)

Employee Signature

Date

 **AIA**® Document A134™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the 28th day of July in the year 2022
(In words, indicate day, month, and year.)

BETWEEN the Owner:

New Berlin CUSD #16
600 Cedar St.
New Berlin, IL 62670

and the Construction Manager:

CORE Construction Services of Illinois, Inc.
601 SW Water Street
Peoria, IL 61602

for the following Project:
(Paragraph deleted)

Additions and Renovations for New Berlin CUSD #16

The Architect:

BLDD Architects, Inc.
100 N. Merchant St.
Decatur, IL 62523

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

New Berlin Junior and Senior High School is to receive a new, approximately 74,500 SF addition including a two-story classroom wing, commons area, shop performing arts space, competition gym and locker rooms, and other support spaces. Renovations include roughly 28,500 SF of gym, locker rooms, fitness rooms and life skills wing. The remaining roughly 64,000 SF of existing building will be demolished upon completion of the project. Site work will include a new bus barn and paving for bus and car drop off and parking.

§ 1.1.2 The Project's physical characteristics:

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

See Program above.

§ 1.1.3 The Owner's budget for the Contract Sum, as defined in Section 2.4:

(Provide total and, if known, a line item breakdown.)

To Be Determined during preconstruction.

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

.1 Design phase milestone dates, if any:

100% Construction Documents March 2023

.2 Construction commencement date:

July 2023

.3 Substantial Completion date or dates, if not established in this Agreement under Section 3.3.1.3:

August 2024

.4 Other milestone dates:

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

To Be Determined during preconstruction.

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

Not Applicable

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

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

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

Jill Larson, Superintendent
New Berlin CUSD #16
600 N. Cedar
New Berlin, IL 62670
jlarson@pretzelpride.com

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

Project Architect

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

.1 Geotechnical Engineer:

TBD

.2 Civil Engineer:

Martin Engineering Company
3695 S 6th Street Frontage Rd.
Springfield, IL 62703

.3 Other, if any:

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

Martin Engineering Company – Land Surveyor

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

Todd Cyrulik
BLDD Architects, Inc.
100 N. Merchant St.
Decatur, IL 62523
todd.cyrulik@bldd.com

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

Tim Erickson, President or designee
CORE Construction Services of Illinois, Inc.
601 SW Water Street
Peoria, IL 61602
timerickson@coreconstruction.com

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

(List any Owner-specific requirements to be included in the staffing plan.)

To Be Determined

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

(List any Owner-specific requirements for subcontractor procurement.)

The Construction Manager will be solely responsible for determining Bid Packages and Contractor Scopes of Work. Owner is a public school district in the State of Illinois required to procure the Work through public bidding and award the contract(s) for the Work to the lowest responsive and responsible bidder. All contracts for any portion of the Work shall be procured through public bidding, including, but not limited to, all trade, supplier, and material contracts. When the lowest responsive and responsible multiple prime bidders (hereinafter referred to as "Contractors") are identified and accepted by the Owner, Owner shall execute the contracts as awarded and then assign those contracts (the "Contracts") to Construction Manager. Construction Manager may reassign the Contracts to Owner if required by law or refuse assignment if a legal or contractual conflict prevents Construction Manager from accepting assignment of any Contract. In such case, the Construction Manager shall manage said Contract in the same manner as Contracts assigned to Construction Manager. Said contracts shall be included in the final Control Estimate established in this Agreement, and Construction Manager shall review any proposed changes to said Contract and advise the Owner as to the impact of any recommended changes on the Control Estimate. Owner accepts any reassignment. The purpose of the foregoing assignment is to assist in the management and administration of the Work and completion of the Project, and Owner appoints Construction Manager as its advisor to accomplish those goals.

The Construction Manager shall cause the Contracts to incorporate substantially the following provisions:

"This Contract has been awarded by the Owner after advertisement for bids. Upon award of the Contract by the Owner, the Owner may assign its rights in this Contract to the Construction Manager to assist in the management and administration of the Project

By submitting its bid, the bidder shall be deemed to have consented to the aforesaid assignment, and to have agreed to become an assigned Contractor to the Construction Manager.

Upon assignment, the Contractor shall become a Contractor of the Construction Manager pursuant to this Contract, and, except as identified within this Contract and as provided by law, shall have contractual privity only with the Construction Manager."

Construction Manager shall prepare all bid invitations, instructions to bidders, and general and supplementary conditions in accordance with the Illinois School Code and other applicable State of Illinois statutes. Construction Manager shall ensure that a sample contract agreement is included in the bid documents. Drawings and specifications shall be provided by the Architect. During preparation of the Construction Documents by the Architect, the Construction Manager shall review said Construction Documents to ensure consistency with the bid documents prepared by the Construction Manager.

Prior to advertisement for bids, Construction Manager shall, upon request, provide all contractor or subcontract agreements to the Owner's attorneys for review and comment.

Construction Manager shall conduct pre-bid meetings with interested bidders in accordance with publicly announced and scheduled meetings.

The Owner shall receive, open, and read aloud all bids as required by the applicable procurement laws. The Construction Manager shall record all bids, prepare bid analyses, and make recommendations to the Owner for the Owner's award of contracts and/or rejection of bids.

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The contract documents prepared by Construction Manager shall require full compliance with all state and local laws.

All Work shall be performed by Contractors which have been assigned by the Owner to the Construction Manager as provided in this Agreement. If the Construction Manager has a reasonable objection to any Contractor identified as the lowest responsive bidder, it shall be the burden of the Construction Manager to present demonstrative evidence to the Owner that the bidder is not responsible, and to present such evidence in a timely manner such that Owner suffers no detriment in procuring another Contractor if necessary.

Construction Manager shall obtain Certificates of Insurance, as well as any required Performance and Payment Bonds, for each of the Contractors immediately upon award of the Contract and verify conformance of same with the Contract Documents prior to allowing the Contractors onto the Site. Insurance of Contractors shall name Owner, Construction Manager, and Architect as "Additional Insureds". Copies of the same shall be transmitted to the Owner and Architect before Contractors may commence Work on the Project.

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

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

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

§ 1.4 For purposes of this Agreement, the term "Contractor" refers to persons or entities who perform Work under contracts awarded by the Owner and assigned to and administered by the Construction Manager, as set forth herein.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 3.2.2 and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.7. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

§ 2.3.3 The Construction Manager shall not perform any Work with its own forces or supply any materials unless permitted under Illinois public bidding statutes and the Owner agrees in writing to allow the Construction Manager to bid on any trade or supplier contracts, provided that the Owner has sole discretion in rejecting the Construction Manger’s bid and the Construction Manager waives any bidding challenge.

§ 2.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 7.1.1 plus the Construction Manager’s Fee as defined in Section 6.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2017. The Contract Time shall be measured from the date of commencement of the Work. Changes in the Work shall be governed by Article 7 of A201–2017.

ARTICLE 3 CONSTRUCTION MANAGER’S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect’s review and the Owner’s acceptance. The Construction Manager

Inlt.

shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; components of the Work; times of commencement and completion required of each Contractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 3.2. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Contractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Phase Services

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

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

§ 3.2 Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, after receipt of bid package bids for all components of the Work, the Construction Manager shall prepare a Control Estimate for the Owner's and Architect's review, and the Owner's approval. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Construction Manager shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work.

§ 3.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 15, including all Modifications thereto;
- .2 a list of the assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 3.2.4, to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, and the Construction Manager's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequence and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, and the Owner's occupancy requirements;
- .5 a date of Substantial Completion, if not established in accordance with Section 3.3.1.3; and
- .6 contingencies for further development of design and construction, as required by Section 3.2.4.

§ 3.2.3 The Construction Manager shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is approved by the Owner, the Owner shall acknowledge its approval in writing. The Owner's approval of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 3.2.4 To the extent that the Contract Documents are anticipated to require further development, the Control Estimate shall include the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.1.3 Substantial Completion

§ 3.3.1.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date:

By the date to be established in the Control Estimate and approved by the Owner.

§ 3.3.1.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.1.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section 3.3.1.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.7.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.6 The Construction Manager shall provide administrative, management, and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner, and the Architect in accordance with the latest approved Project schedule and the Contract Documents.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the Owner's approval of the Control Estimate at commencement of construction, the Construction Manager may request that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Such evidence shall include the names and contact information for any and all equity investors, debt guarantors, and lenders. After the Owner approves the Control Estimate, the Construction Manager may request such information as set forth in A201-2017, Section 2.2.

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

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A Lump Sum equal to \$65,000.

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

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

Individual or Position	Rate
Director of PreConstruction	\$120 / HR
Sr PreConstruction Manager	\$120 / HR
PreConstruction Manager	\$120 / HR
Senior Project Manager	\$120 / HR
Project Manager	\$113 / HR

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ten (10) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

0.833 % per month

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after approval of the Control Estimate. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

A lump sum equal to three and one quarter percent (3.25%) of the Cost of the Work of the Project as defined in this Agreement.

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

Shall be as set forth in Section 6.1.2 for changes which increase the Cost of the Work. This fee shall be applied to the Cost of the Work and does not include Cost of the Work expenses such as the Construction Manager's General Conditions, Bond or Insurance.

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

Contractor's overhead and profit shall be limited to 15% for additive changes to their work.

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

§ 6.1.6 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Not Applicable		

§ 6.1.7 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Not Applicable

§ 6.1.8 Other:

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

Not Applicable

§ 6.2 Changes in the Work

§ 6.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time and the Contract Sum as a result of changes in the Work, as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

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

§ 6.2.2 Increased costs for the items set forth in Sections 7.1 through 7.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 6.1.3.

§ 6.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work in comparison with the Control Estimate or the date of Substantial Completion, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work. For purposes of this Section 7.2, the following hourly labor rates shall be used and such rates shall be inclusive of all costs for personnel including transportation, cell phone, and computer. The rates listed are valid through April 30, 2023 and may be adjusted once per year, thereafter, at a rate not to exceed 3% per year. Not all of the rates listed below may be used on the project. The Construction Manager will provide a list of projected costs and time spent on the project as part of the Control Estimate prior to the commencement of construction.

Director of Operations	\$176
Director of Preconstruction	\$171
Senior Preconstruction Manager	\$129
Preconstruction Manager	\$116
Assistant Preconstruction Manager	\$102
Senior Project Manager	\$141
Project Manager	\$120
Assistant Project Manager	\$102
Director of Field Operations	\$176
Senior Project Superintendent	\$138
Superintendent	\$136
Assistant Superintendent	\$102
Senior Project Director	\$171
Safety Director	\$135
Secretary	\$49
Project Engineer	\$86
Architect	\$140
Project Coordinator	\$60
Project Accountant	\$75
Virtual Construction Director	\$146
Jobsite Safety Officer	\$91
Jobsite Quality Officer	\$120
Scheduler	\$120
Virtual Construction Manager	\$91
Construction Coordinator	\$75
Contract Administrator	\$75
Information Systems Technician	\$91
Intern	\$49
Preconstruction Coordinator	\$75

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

§ 7.3 Contract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Construction Manager shall be compensated for General Liability and Excess Liability Insurance per the Control Estimate. This insurance is not included in the Construction Manager's Fee described in Section 6.1.2.

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

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager.

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

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

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

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

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

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

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§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not to Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;

- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 through 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 through 7.7; and
- .8 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit the cost control information required in Section 3.2.5, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

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

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

- .1 The Cost of the Work as described in Article 7;
- .2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .3 The Construction Manager's Fee computed upon the Cost of the Work described in the preceding Section 11.1.6.1.1 at the rate stated in Section 6.1.2; or if the Construction Manager's Fee is stated as a fixed sum in Section 6.1.2, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 11.1.6.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Contractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.7.

§ 11.1.7 Retainage

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

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%).

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

The Construction Manager's Fee, General Conditions, General Requirements (where applicable), Bond, and Insurance.

§ 11.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.7.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

With Owner and Construction Manager's mutual approval, upon 50% completion of the overall Project, the retained percentage may be reduced for those subcontractors and suppliers whose work is complete and accepted by the Owner and the Construction Manager.

§ 11.1.7.3 Except as may be set forth in this Section 11.1.7.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Not Applicable

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

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

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

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

§ 11.2 Final Payment

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

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

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

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

Init.

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 60-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs described in Sections 7.1 through 7.7 and not excluded by Section 7.9 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

§ 11.3 Interest

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

0.833 % per month

ARTICLE 12 DISPUTE RESOLUTION

§ 12.0 If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives who shall possess the necessary authority to resolve such matters and who shall record the date of the first discussion. If the Parties' representatives are not able to resolve such matters within five (5) business days of the date of the first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not reached. Upon receipt of such notice, senior executives of the Parties shall meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the Parties may submit such matters to the dispute resolution procedures set forth herein. Such disputes or other matters shall be submitted to the Initial Decision Maker for resolution in accordance with the requirements set forth in the Contract Documents.

§ 12.1 Initial Decision Maker

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

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

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

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction. The Owner and Construction Manager waive any right either may have to a trial by jury.
- Other: *(Specify)*

Any suits shall be exclusively brought in the Circuit Court of the Seventh Judicial Circuit in Sangamon County, State of Illinois. Each party hereto unconditionally and irrevocably submits to the exclusive jurisdiction of the Circuit Court of the Seventh Judicial Circuit in Sangamon County, State of Illinois with respect to any such suit and waives any objection that such party may have to the laying of venue of any suit in the Circuit Court of the Seventh Judicial Circuit in Sangamon County, State of Illinois.

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Owner's Approval of the Control Estimate

§ 13.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

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

§ 13.1.3 In the event of termination of this Agreement pursuant to Section 13.1.1 after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

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

§ 13.1.4 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 13.2 Termination or Suspension Following the Owner's Approval of the Control Estimate

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the Owner shall then only pay the Construction Manager an amount calculated as follows:

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

Owner shall pay all costs incurred by Construction Manager prior to termination along with a termination fee equal to 10% of the Construction Manager's Fee not yet earned prior to the termination based on the costs in the most recent Control Estimate provided by the Construction Manager. If a Control Estimate has not been established for the Project, the termination fee shall be calculated based on the most recent estimate of the Contract Sum provided to Owner by Construction Manager.

§ 13.2.4 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017. In such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.2.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

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

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

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

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

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

§ 14.3.1.6 Other Insurance

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

Coverage	Limits
Not Applicable	

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

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

§ 14.3.2 Construction Phase

After the Owner approves the Control Estimate, the Owner and Construction Manager shall purchase and maintain insurance as set forth in AIA Document A134-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 Construction Manager and Owner shall require Payment and Performance bonds from the Multiple Prime Contractors whose contracts have been assigned to Construction Manager with Article 11 of the General Conditions. The Owner shall be named as 'Additional Insured' on the commercial general liability policy. The Construction Manager shall provide bonds as set forth in AIA Document A134™-2019 Exhibit A, and elsewhere in the Contract Documents. The surety on the bond shall be a company that is licensed by the Department of Insurance authorizing it to execute surety bonds and the company shall have a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency.

§ 14.4 Notice

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

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

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A134™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price
- .2 AIA Document A134™-2019, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 Intentionally Deleted

- .5 Other Exhibits:
(Check all boxes that apply.)

Intentionally Deleted

[] Supplementary and other Conditions of the Contract:

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

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

Exhibit B – CORE Project Approach Matrix

Project Plans and Specifications shall be enumerated in the Control Estimate which shall be agreed upon by the Owner prior to the commencement of construction.

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

OWNER (Signature)

Jill Larson, Superintendent

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Tim Erickson, President

(Printed name and title)

AIA[®] Document A134[™] – 2019 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 28th day of July in the year 2022
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Additions and Renovations for New Berlin CUSD #16

THE OWNER:
(Name, legal status, and address)

New Berlin CUSD #16
600 Cedar St.
New Berlin, IL 62670

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

CORE Construction Services of Illinois, Inc.
601 SW Water Street
Peoria, IL 61602

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201[™]-2017, General Conditions of the Contract for Construction. Article 11 of A201[™]-2017 contains additional insurance provisions.

§ A.2.2 Liability Insurance

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

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
Not Applicable	

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
Not Applicable	

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.1.5 Owner and Construction Manager waive all rights against each other and against all Subcontractors, Sub-subcontractors, Material Suppliers and the Architect/Engineer, for damages caused by fire or other perils covered by Builder’s Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. The Owner or Construction Manager, as appropriate, shall require of the Architect, Architect’s consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ A.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

§ A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage **Limits**
Not Applicable

ARTICLE A.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager’s Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

Insurance	Deductible or Self-Insured Retention
General Liability	\$750k Deductible
Worker’s Compensation	\$500k Deductible
Professional / Pollution	\$100k SIR
Auto Comp & Collision	\$12,500

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner and the Architect as additional insureds for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions during the Construction Manager’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 04 13, CG 20 37 04 13, and, with respect to the Architect and the Architect’s consultants, CG 20 32 04 13.

§ A.3.2 Construction Manager’s Required Insurance Coverage

§ A.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

Not Applicable

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and Two Million Dollars (\$ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) combined single limit per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ A.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and One Million Dollars (\$ 1,000,000) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.3 Construction Manager's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this Section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Deductibles vary depending upon construction type and are higher for certain renovations. Standard deductible for non-combustible new construction is \$10k for AOP and \$50k for Water Damage. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Construction Manager shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

- § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction

site on an "all-risks" completed value form.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

§ A.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Excess Liability	\$2,000,000 per occurrence and general aggregate

§ A.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Equal to the Contract Sum
Performance Bond	Equal to the Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



Item	Included in General Conditions	Included in Precon fee	Included in CM Fee	Provided by Owner	Bid Package/Trades
Administrative/accounting/clerical-jobsite based Groundbreaking Expenses			X		
Administrative/accounting/clerical-office based Home Office Administrative Support			X		
Accounting/Financial Management			X		
Bidding					
Electronic Distribution of Bidding Documents		X			
Bid Advertisement & Solicitation		X			
Building permits & inspection fees	N/A				
Change order administration					
Close-out documents					
As-built document creation & reproduction	X				
Operation and Maintenance Manuals	X				
Construction cleanup					
Final cleaning					X
Dumpster, trash hauling & landfill charges					X
Hoisting Expenses					X
Insurance-Builder's Risk				X	
Insurance and Bonds					
Performance & Payment Bond	X				
General Liability	X				
Workers Compensation	X				
IT equipment & services-jobsite based					
High Speed Internet Connection	X				
IT equipment & services-office based			X		
Jobsite drinking water					X
Jobsite fire prevention requirements					
Fire Extinguishers	X				
Jobsite supervisory personnel					
Job Superintendent(s)	X				
Director of Field Operations	X				
Jobsite mobilization			X		
Jobsite security	X				
Jobsite snow removal	X				
Jobsite toilets					X
Jobsite - trash chutes					X
Legal fees			X		
Miscellaneous materials pickup & delivery	X				
Office equipment-jobsite based	X				
Office equipment-office based					
Software for budgeting, scheduling, PM, and Accounting	X		X		
Office supplies-jobsite based	X				
Office supplies-office based			X		
Office-based estimating services		X			
Office-based scheduling services	X				
Office-based project bidding services					
Bid Solicitation and Administration		X			
Office (home) - Building Rent			X		
Offsite storage					X
Postage, courier & delivery charges	X				
Pre-construction estimating services					
SD, DD, 50% CD, 95% CD		X			
Pre-construction scheduling services					
Pre-construction planning services					
Constructability Review		X			
Pre-construction value engineering					
Printing					X
Construction Documents (plans and specs)					X
Miscellaneous drawing reproduction					X
Project accounting services-office based					
Project management services					
Senior Project Manager	X				
Project Manager(s)	X				
Project Executive			X		
Project Engineer(s)	X				
Project quality control measures					
Progress photography			X		
Project signs					
Project Sign	X				
Temporary construction signage	X				
Safety program				X	
Personal Protective Equipment					
First Aid Supplies	X				
Safety Audit - Safety Director	X				
Rails, opening protection					X
Small tools & equipment	X				
Survey, layout & staking	X				
Temporary fencing and barricades					X
Temporary partitions					X
Temporary stairs					X
Temporary weather enclosures					X
Temporary jobsite telephone					
Cell phones	X				
Land/fax lines	N/A				
Temporary offices	X				
Temporary utilities - electric				X	
Service Fees (power company)					X
Temporary electric service installation					
Consumables				X	



**REQUIREMENTS FOR SUBMITTAL OF QUALIFICATIONS
PROJECT APPROACH**

Temporary utilities - water Service Fees (City) Temporary water service installation Consumables				X X	X
Temporary utilities - Heating/Vent Equipment Consumables Installation					X X X
Testing & Inspections Testing lab services	X				
Trailers Tool Storage	X				X X
Traffic control On site Off site	X X				
All travel expenses associated with Project Superintendent Project Manager Project Executive Project Engineer	X X X		X		

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Additions and Renovations for New Berlin CUSD #16

THE OWNER:

(Name, legal status and address)

New Berlin CUSD #16
600 Cedar St.
New Berlin, IL 62670

THE CONSTRUCTION MANAGER:

CORE Construction Services of Illinois, Inc.
601 SW Water Street
Peoria, IL 61602

THE ARCHITECT:

(Name, legal status and address)

BLDD Architects, Inc.
100 N. Merchant St.
Decatur, IL 62523

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Construction Manager as Constructor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. Notwithstanding the foregoing, in the event the Architect's alleged liability is at issue for the Drawings and Specifications, the Architect shall not serve as the Initial Decision Maker and no initial decision shall be required under Article 15.

§ 1.1.9 Order of Precedence

In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) the drawings, specifications, and addenda issued prior to the execution of this Agreement; (d) information furnished by the Owner

pursuant to Article 3 of the Agreement or Article 2 of the General Conditions of the Contract; (e) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Should discrepancies appear among the Contract Documents or between the Contract Documents and existing conditions, the Contractor shall request an interpretation from the Architect before bidding. If the Contractor fails to make such a request, it is presumed that both provisions were included in the bid and the Architect shall determine which of the conflicting requirements shall govern. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination. Where conflicts exist within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the more stringent or higher quality requirements shall apply. Large scale drawings shall take precedence over small scale drawings; figured dimensions on the drawings over scaled dimensions, and noted material over graphic representations.

§ 1.2.5 By executing the Contract, the Contractor acknowledges that it has satisfied itself as to the nature and location of the Work; the general and local conditions, including those bearing upon transportation, disposal, handling and storage of materials; availability of labor, water, electric power, roads, and uncertainties of weather; ground water table or similar physical conditions of the ground; the character, quality, and quantity of all surface and sub-surface materials to be encountered; the character of equipment and facilities needed prior to and during the execution of the Work; and all other matters that can in any way affect the Work and the cost thereof under the Contract Documents. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve the Contractor from any obligations with respect to the Contract.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or

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distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require;

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(2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) changes in the Work increase the Contract Sum by five percent (5%) or more. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Owner's right to stop the work shall not relieve the Contractor from its sole and exclusive responsibility for site safety. The Owner's exercise of the right to stop the work shall be solely for the Contractor's failure to complete the work in accordance with the Contract Documents and shall in no way be construed as placing the Owner in charge of the work or in any way responsible for site safety.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 All Work shall be performed by "Multiple Prime Contractors", which shall refer to persons or entities who provide construction services, materials, or equipment under contracts that are awarded by the Owner and administered by the Construction Manager pursuant to the Agreement. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager. When the lowest, responsive and responsible Multiple Prime Contractors are identified and awarded contracts by the Owner, the award of that trade contract shall be assigned by the Owner to the Construction Manager, and each such successful bidder shall then be known as a "Contractor." The terms "Contractor," "the Contractor," or "a Contractor" may refer to all, any one, or several of the Multiple Prime Contractors. Each Contractor acknowledges: (1) that the Owner is a direct intended third party beneficiary of each contract assigned by the Owner to Construction Manager and Contractor; (2) that notwithstanding any contract provision to the contrary, Contractor shall be bound to perform the Work in accordance with these AIA A201 General Conditions, as amended, which terms the Contractor a Contractor herein; and (3) that the Contractor is not a third party beneficiary of the AIA A133 Construction Management contract between Construction Manager and Owner. Notwithstanding the assignment by the Owner to the Construction Manager of the contracts with the Contractors, all of Owner's duties and responsibilities under this Agreement shall remain in full force and effect. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall see to, supervise, and assure complete performance of the Work subject to the bidding requirements of 105 ILCS 5/10-20.21 in accordance with the Contract Documents.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the

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Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. The Contractor shall regularly inspect the site and work to familiarize itself with the progress and quality of the Work, and to determine for the Owner's benefit and protection if the Work is proceeding with the intent of the Contract Documents and the Construction Schedule. The Contractor shall use reasonable care to guard the Owner against defects and deficiencies in the Work and the Subcontractors' failure to carry out the Work in accordance with the Contract Documents and the Construction Schedule. The Construction Manager will keep the Owner, the Architect and the Architect's Project Representative informed of the progress of the Work.

§ 3.3.4 If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded. If sales, consumer, use and similar taxes and/or tariffs not accounted for in the Contract Sum, no matter when effective, increase the cost and/or time of the Work, the Owner hereby agrees to enter into a Change Order commensurate with said escalation to account for the full difference in the price of materials and/or time for the Work.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall assist the Owner in securing and the Owner, as part of the Contract Sum, shall pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, the Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, the Construction Manager, and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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§ 3.7.5 If, in the course of the Work, the Contractor knowingly encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, the Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor and the Construction Manager shall each employ a competent superintendent or foreman and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner, the Construction Manager, and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Construction Manager, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor or the Construction Manager shall not employ a proposed superintendent or foreman to whom the Owner or Architect has made reasonable and timely objection. The Contractor or the Construction Manager shall not change the superintendent or foreman without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's, Construction Manager's, and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the

Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

The Construction Manager shall provide professional construction management services, but shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Agreement.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

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§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Agreement, but only to the extent caused by the negligent acts or omissions of the Construction Manager, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Construction Manager, Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Construction Manager, Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner, Construction Manager, and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor or the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner, Construction Manager, and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager, or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If

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the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.5 Payments to Subcontractors by the Contractor

§ 5.5.1 The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner or Construction Manager, as applicable, an amount equal to the percentage of completion allowed to the Contractor on account of each Subcontractor's Work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to its Sub-subcontractors.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may, after reasonable notice to Contractor, clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

In Subparagraphs 7.3.3 and 7.3.4, the allowance for overhead and profit combined, included in the total cost of the Owner, shall not exceed the following schedule:

1. For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost.
2. For the Contractor, for Work performed by his Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub subcontractor involved, for any Work performed by that Subcontractor's own forces, fifteen percent (15%) of the cost.

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4. For each Subcontractor, for Work performed by his Sub subcontractors, five percent (5%) of the amount due the Sub subcontractor.
5. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$200.00 be approved without such itemization.
6. For deleted work the credit shall be the net cost.

The overhead and profit charges referred to in the preceding subparagraphs 1 through 6 shall constitute full reimbursement for all costs of supervision, engineering, field and main office expense, premiums on insurance and bonds, small tools, incidental job burdens, etc.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost (excluding Contractor's overhead or fee) as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.2.4 Contractor agrees to commence Work immediately when notified by Owner, Construction Manager, or Architect, and to conduct and perform the Work continuously and with reasonable diligence in strict accordance with the Construction Manager's time schedule and the Architect's project schedule, and in accordance with Construction Manager's directions as to the specific Work to be commenced and completed at any particular time. Should said time schedule be changed by order of the Owner, Construction Manager, or the Architect, Contractor agrees to proceed as directed, except in case of delays caused by acts of God, or by the Owner, Construction Manager, or Architect; and to cooperate in related Work and in no manner to interfere with the Work of other contractors or of other subcontractors; and to provide, at its expense, such additional shifts and overtime necessary to meet time schedules. Inability of Contractor to complete the Work in the time provided shall, at the option of the Owner, constitute a default on the part of Contractor hereunder.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 8.3.4, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner, Construction Manager, and Contractor mutually agree.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 Adverse Weather

§ 8.3.4.1 If a Claim is made for an extension of time based upon weather delays in accordance with the Contract Documents, an extension may be granted only for the number of Adverse Weather Days in excess of the number of work days indicated in the accepted Control Estimate (the "Allotted Adverse Weather Days").

§ 8.3.4.2 Adverse Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the Project Site:

- (i) Precipitation (rain, snow, or ice) in excess of one-tenth inch (0.10") liquid measure.
- (ii) Temperatures that are more severe than the monthly daily average for the day's construction activity, if such temperature requirement is specified or accepted as standard industry practice.
- (iii) Sustained wind in excess of twenty-five (25) m.p.h.
- (iv) Frost in the ground which prevents excavation or earthwork activities.
- (v) other weather conditions which require cessation of work by subcontractors.

§ 8.3.4.3 Adverse Weather Days may include, if appropriate, "dry-out" or "mud" days:

- (i) resulting from precipitation related days that occur beyond the Adverse Weather Days;
- (ii) only if there is a hindrance to Project site access or sitework and Contractor has taken all reasonable accommodations to avoid such hindrance.

§ 8.3.4.4 Adverse Weather Days may include, if appropriate:

- (i) any weather condition that requires cessation of construction activities as required by the recommendations promulgated by OSHA or by union contracts; or
- (ii) an extension granted by the Owner, in the Owner's sole discretion, to avoid working in conditions which could have a negative impact on the Project quality.

§ 8.3.4.5 An Adverse Weather Day may be counted if adverse weather prevents the performance of Work for fifty percent (50%) or more of the Contractor's scheduled work day and critical path construction activities were included in the day's schedule, including a weekend day or holiday if the Contractor has scheduled construction activity that day.

§ 8.3.4.6 The number of actual Adverse Weather Days shall include days impacted by actual adverse weather and shall be calculated chronologically and shall be recorded as full days. If the number of actual Adverse Weather Days exceeds the Allotted Adverse Weather Days, such delay shall constitute a Delay in accordance with 8.3.1. In the event the actual Adverse Weather Days are less than the Allotted Adverse Weather Days, the excess time shall be considered time gained by the Contractor on the Project Schedule shall not be offset against any delays described in 8.3.1.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager, or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall include a partial unconditional lien release and waiver executed by all Subcontractors for payment for Work or materials that are the subject of the present Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

The Contractor shall indemnify and hold the Owner harmless from all liens, claims, security interests or encumbrances, including costs and attorneys' fees relating to defense of such liens, claims, security interests or encumbrances filed by the Contractor, any Subcontractor, supplier or other party.

§ 9.3.4 Prior to the final payment, and with the final Certificate of Payment (as prepared by the Architect), the Contractor shall provide all final Waivers of Lien as follows: The Contractor's final waiver in the full amount of its contract plus any adjustments made by change orders, etc., and final Waivers of Lien from Subcontractors and Suppliers in the full amount of their subcontractors plus any Adjustments, Bonds, Guarantees, etc., as required by the Specifications.

§ 9.3.5 Upon receiving an Application for Payment complying with this Section 9.3, the Construction Manager shall promptly submit the Application to the Architect for review and certification as set forth in Section 9.4.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be

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made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor or covered by insurance or the basis of a Change Order;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor not covered by insurance;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

The Owner shall not be deemed in default by reason of withholding payment while any of the above grounds remain uncured.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, the Contractor nevertheless shall expeditiously continue to execute the Work.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner or the Construction Manager, as the case may be, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner or the Construction Manager, as the case may be, has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner or the Construction Manager shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, the Construction Manager, nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner or Construction Manager does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Construction Manager determines that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure of the Construction Manager to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor shall reimburse Owner for all Architect's fees for Additional Services necessitated by the Architect being required to make Substantial Completion inspections beyond the initial inspection.

§ 9.8.3 Upon receipt of the Construction Manager's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor is responsible for the warranty of all Work, whether performed by it or its Subcontractors at any tier.

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§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers a portion substantially complete, the Construction Manager shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Construction Manager's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Construction Manager and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Construction Manager's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Construction Manager submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Construction Manager knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Contractor or Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Contractor or Subcontractor refuses to furnish a release or waiver required by the Owner, the Construction Manager may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Construction Manager shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Construction Manager or any Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Construction Manager and certification by the

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Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work, occupants of the building, and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

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§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 Within ten (10) days of the execution of the Contract, the Contractor shall furnish a Performance Bond and a Payment Bond. The Performance bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of its Contract Sum as security for the faithful performance of the Contract Documents, and the Payment Bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such bonds shall be in a form and with a surety acceptable to the Owner and shall not include limitation period shorter than that provided by Illinois law. The bonds shall name the Owner as Primary Co-Obligee and the Construction Manager as Dual Obligee.

The Performance Bond and the Labor and Material Payment Bond shall guarantee the performance of the duties placed on the Contractor pursuant to the contract with the Owner, and shall indemnify the Owner from any liability or loss resulting to the Owner from any failure of the Contractor fully to perform each or all of said duties. The Performance Bond and the Payment Bond shall be deemed to cover all such duties.

The Performance Bond and the Payment Bond herein shall be placed with a surety company or companies having a policyholders' rating not lower than "A-" and a financial rating not lower than "XII" in Best's Insurance Guide (current edition), unless a lower rating is approved by the Owner, in writing.

All bonds shall include a specific obligation of the Surety to guarantee the faithful performance of the Contractor under the Illinois Prevailing Wage Law.

The bonds shall comply with the Public Construction Bond Act, 30 ILCS 550/1. Whenever the Contractor shall be and is declared by the Owner or Construction Manager to be in default under the Contract, the surety of the Contractor shall be responsible to make full payment to the Owner or Construction Manager for any and all extra work and accounting and other expenses incurred by the Architect and Construction Manager as a result of a Contractor's default and to pay the Owner and Construction Manager all attorney's fees in addition to paying testing, consulting, engineering, accounting and court costs incurred by Owner or Construction Manager as a result of a Contractor's default and in protecting the Owner's and Construction Manager's rights under the agreement with the Contractor to remedy the Contractor's default or honor the terms of the Performance Bond.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner and the Construction Manager of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

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§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at Contractor's expense after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after

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bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall be in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. ("Act"). Provided, however, that the Owner shall not be deemed in violation of the Act for failure of the Construction Manager to timely distribute payment to the Contractor, where payments were made by the Owner to the Construction Manager in accordance with the Act and the Contract Documents.

§ 13.6 The Contractor agrees to fully comply with the requirement of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., including, but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Contractor further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder.

As required by Illinois law, in the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity provision, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

(a) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service; and agrees further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

(b) That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

(c) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national

origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service.

(d) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

(e) That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules.

(f) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.

(g) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and agrees further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

The Contractor and all of its subcontractors shall pay to any laborers, workmen and mechanics, who are employed in actual construction work on the site of the construction project, not less than the prevailing rate of wages as determined by the Illinois Department of Labor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, and construction equipment and machinery thereon paid for by the Owner;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Construction Manager (and Construction Manager may, in turn, notify the Contractor) in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

§ 14.5 Termination by the Construction Manager

§ 14.5.1 Construction Manager shall obtain Owner's authorization before terminating any Contract pursuant to this Article 14 that has been assigned to the Construction Manager by Owner pursuant to Section 1.1.14 of the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction in accordance with 8.3.4.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, increased financing costs, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision

Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding unless either party demands mediation within 30 days. .

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for litigation. If such a demand is made and the party receiving the demand fails to file for litigation within 60 days after receipt thereof, then both parties waive their rights to litigation proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration – Intentionally Deleted

(Paragraphs deleted)

§ 15.5 Prevailing Party

§ 15.5.1 The Prevailing Party in any arbitration, litigation or other binding dispute resolution procedure shall be entitled to recover any and all costs and expenses incurred with respect to such proceeding including, without limitation, reasonable attorneys' fees; arbitration fees or court costs; other disbursements and costs; and expert witness fees and costs. As used herein, Prevailing Party means the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to claims having the greatest value or importance as determined by the court or arbitrator(s) allowing for all of the claims, counterclaims, and defenses asserted under the contract. In claims for money damages, the total amount of recoverable attorneys' fees and costs shall not exceed the net monetary award of the Prevailing Party.