

***Proposed agenda items received 24 hours before the scheduled meeting will be added to the agenda at the meeting.**

**TENTATIVE
REGULAR MEETING
BOARD AGENDA**

**December 13, 2021
7:30 PM**

1. Call Meeting to Order
2. Receiving of Visitors - Public Comment
 - 2.A. Reports and Information from Administration
 - 2.A.1. Superintendent's Report
 - 2.A.2. Principal Report
3. Action Items (Discuss, Consider, May take action on the following)
 - 3.A. Routine Business - Consent Agenda
 - 3.A.1. Excuse Absent Board Members (as necessary)
 - 3.A.2. Minutes
 - 3.A.3. Treasurers Report
 - 3.A.4. Claims
 - 3.B. Approve Board Policies 2009 and 4063.
 - 3.C. Approve Board Policies: 3001, 3002, 3003, 3003.1, 3004, 3004.1, 3005, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3035, 3036, 3037, 3039, 3040, 3041, 3042, 3043, 3044, 3045, 3046, 3047, 3048, 3049, 3050, 3051, 3052, 3053, 3054, 3055, 3056, 3057, 3058 and forms (3000) with delayed implementation until July 2022.
 - 3.D. Approve the 2020-2021 Audit.
 - 3.E. Discuss, consider, and take action to approve AIA construction documents with Boyd Jones and authorize the superintendent and/or board president to execute the same.
 - 3.F. Go into Executive Session to Discuss Superintendent's Evaluation and Contract.
4. Future Meeting Dates
5. Adjournment



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

Superintendent Board Report December 13, 2021

1. Mrs. Bacon, Mrs. Christiansen, Mr. Vlach, and I were able to attend the NASB Conference in Omaha on November 17th – 19th. There were a lot of great sessions and information we were able to collect, discuss, and think about.
2. LDNE App and School Website Update. Currently we spend \$2,160/year for SOCS website hosting and \$450/year for Swift K-12 calling system. Apptegy will provide Thrillshare, a LDNE App, new website, and calling system for \$5,825/year. The new development fee for a new website and app is \$6,000. I plan to use ESSERS money to get this started.
3. Early Childhood Expansion Grant – the addition of a 3-year-old preschool classroom.
4. The classifications for football have been released and we will be D-1 for the 2022 and 2023 seasons.
5. Softball Cooperative.
6. Annual Report.

Bill Review: Lisa is scheduled for January and Corey is scheduled for February.

Lyons-Decatur Northeast School
Annual Report Card
2020-2021

Financial:

Per pupil 2020-21 cost..... \$22,721 ADM
 Total 2020-21 General Fund Budget \$6,849,000
 Expenditures for Instruction.....49%
 Expenditures for Support Services21%
 Expenditures for Operations/Maintenance7%
 Expenditures for Transportation4%
 Expenditures for State/Federal/Adult Ed.4%
 Expenditures Cash Reserve15%
 Revenue: Cash balance.....30%
 Revenue from Local/County.....3%
 Revenue from State.....7%
 Revenue from Federal3%
 Revenue from Property Taxes57%

Demographic:

Lyons-Decatur Northeast is classified as a Class III accredited school by the Nebraska Department of Education. The school district is comprised of 143.0 square miles with Burt County have 115.7 square miles, Cuming 3.2, and Thurston 24.1. There is one educational center located in Lyons, providing instruction in grades PS – 12.

Facilities:

Main building constructed in 1907 with additions in 1930, 1950, 1963, 1978, and 1996.

Transportation:

Number of students transported (avg.)..... 68
 Number of families paid for transportation 21
 Transportation Costs \$185,158

Faculty:

Number of Professional Staff 29
 Professional staff with master’s degree 14
 Professional staff with hours past B.A..... 8
 Professional staff with B.A..... 7
 Average years of experience in this system 16.96
 Number of teaching days 180
 Number of Professional Development Days 5
 Average Salary \$56,572
 Teachers are evaluated at least one time each year using the written evaluation plan and procedure approved by the board. All probationary teachers are evaluated once each semester for three years.

Curriculum:

Curriculum is evaluated and updated annually by school staff. IEPs are developed and written by parents and teachers for all students verified in Special Education Programs. Learning is assessed in classrooms utilizing NSCAS, MAPS, and classroom tools.

Technology: All students have access to classroom computers or tablets and internet.

Target Goals:

“Empower all students to achieve”

We Believe:

- ...all people have strengths.
- ...all people can learn.
- ...education must adapt to societal needs.
- ...learning is a lifelong process.
- ...all people benefit from a safe, positive, and respectful environment.
- ...education is a cooperative responsibility of students, families, school, and community.
- ...all people need to develop foundational skills.

We challenge you to excel academically and to prepare yourself for the future. We encourage you to participate in our activity programs to grow physically, emotionally, and socially. Your success at LDNE lies in your effort and involvement, you will be faced with challenges, experience success, and encounter setbacks. In each instance you will learn valuable lessons for life. You will be challenged to set goals, make a commitment, and work hard to achieve. The faculty and administration are all here to encourage and assist all students. In everything you do, do your best.

	State	LDNE
Free/Reduced Meals	46.33%	48.18%
Special Education	15.67%	19.03%
Mobility Rate	3.95%	5.94%
Attendance	93.21%	96.31%

For more information go to:
<https://nep.education.ne.gov/>

Lyons-Decatur Northeast School Annual Report Card 2020-2021

Elementary Students

Grade	PK	K	1	2	3	4	5	6	Total
Enrollment	27	16	18	18	14	23	18	21	155

Contracted Out 0
 Average Class Size 17.2
 Pupil-Classroom Teacher Ratio:
 General Education 16-1
 Special Education 13-1
 Title 1 School wide program

MAP Assessment Data – Fall 2021

Grade	Reading	Language	Math	Science
K	138.7	No testing	146.7	No testing
1	156.8	No testing	160.7	No testing
2	167.6	168.1	170.7	No testing
3	187.2	184.3	184.2	189.8
4	205.8	201.9	203.5	202.9
5	199.6	201.7	202.8	201.6
6	213.7	213.9	215.7	208.3
7	212	213	220.7	210
8	225.6	222.8	229.8	217.4
9	218.6	221.2	229	217.5
10	226.4	225	234.6	220.3
11	226.6	225.7	236.3	220

NSCAS English Language Arts Assessment Data

**Percent Proficient*

Grade	District	State
3 rd Grade	54%	50%
4 th Grade	25%	54%
5 th Grade	61%	46%
6 th Grade	52%	45%
7 th Grade	48%	44%
8 th Grade	48%	50%

NSCAS Math Assessment Data

Grade	District	State
3 rd Grade	38%	47%
4 th Grade	38%	46%
5 th Grade	33%	46%
6 th Grade	33%	47%
7 th Grade	57%	46%
8 th Grade	20%	45%

ACT Data – Class of 2022

School	ELA	Math	Science
Lyons-Decatur	18.1	19.6	20.7
State	16.8	18	18.3
Bancroft-Rosalie	17.2	18	19.1
Oakland-Craig	16.2	17.8	18.4
Tekamah-Herman	17.3	17.2	18.2
West Point Beemer	16.5	18.3	18.1
Wisner-Pilger	16.4	18.8	19

Secondary Students

Grade	7	8	9	10	11	12	Total
Enrollment	20	25	28	19	11	16	119

Contracted Out 1
 Pupil-Classroom Teacher Ratio:
 General Education 11-1
 Special Education 10-1

Required Credits:

English 40
 Math 30
 Science 30
 Social Studies 35
 Careers 10
 Personal Health and Fitness 10
 Speech 5
 Required credits for graduation 230

Course Offerings:

Number of course offerings grades 7-8 20
 Number of course offerings grades 9-12 70
 Number of instructional units required by State 340
 Number of instructional units offered 520
 Language Arts 75
 Social Studies 55
 Math 80
 Science 75
 Foreign Language 20
 Career Education 110
 Health & Physical Education 35
 Visual & Performing Arts 70

College Credit Offerings:

The students at LDNE have a variety of opportunities to take dual and college credit courses while enrolled in our high school. We offer courses through P2T (in Computer Science, Construction, Education, Health Science, and Welding), dual credit English, dual credit Science, and a variety of online courses through WSC, UNL, Dakota Wesleyan, etc. Our seniors also have the ability to enroll in Fridays at Northeast and Fridays at WSC.

Graduates:

Received Scholarships 8
 Amount of Scholarships Earned \$157,680
 Pursuing Post-High School Education
 4-year college 4
 2-year college 2
 Armed Services 0
 Employment 2

Suggested List of Motions

December 13, 2021

(Open Meetings Act rules posted on the north wall of the library)

1. _____ opened the meeting at _____ P.M.

2. It was moved by _____, seconded by _____

To approve the Consent Agenda items:

1. Excuse Absent Board Members (if necessary)
2. Minutes
3. Treasurers Report
4. General Fund Claims
5. Special Building Fund Claims
6. Lunch Fund Claims

Roll Call: Aye: _____ Nay: _____

3. It was moved by _____, seconded by _____

to approve board policies 2009, 4063, and the assignment letter associated with policy 4063.

Roll Call: Aye: _____ Nay: _____

4. It was moved by _____, seconded by _____

to approve board policies: 3001, 3002, 3003, 3003.1, 3004, 3004.1, 3005, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3035, 3036, 3037, 3039, 3040, 3041, 3042, 3043, 3044, 3045, 3046, 3047, 3048, 3049, 3050, 3051, 3052, 3053, 3054, 3055, 3056, 3057, 3058, and forms (3000) with delayed implementation until July 2022.

Roll Call: Aye: _____ Nay: _____

5. It was moved by _____, seconded by _____

to approve the 2020-2021 School District Audit.

Roll Call: Aye: _____ Nay: _____

6. It was moved by _____, seconded by _____

to approve AIA construction documents with Boyd Jones and authorize the superintendent and/or board president to execute the same.

Roll Call: Aye: _____ Nay: _____

7. It was moved by _____, seconded by _____
to go into executive session at _____ to discuss the Superintendent's Evaluation
and Contract.

Roll Call: Aye: _____ Nay: _____

8. It was moved by _____, seconded by _____
to come out of executive session at _____.

Roll Call: Aye: _____ Nay: _____

9. _____ adjourned the meeting at _____ P.M.

Principal Report - December 2021 Board Meeting

A. Calendar - Upcoming Events

Elementary Holiday Program-----Tuesday, December 14
Virtual Secondary Holiday Program-----Thursday, December 16
Last Day for Elementary Students-----Friday, December 17
Last Day for Secondary Students-----Tuesday, December 21
Staff Inservice-----Monday, January 3
Students Return-----Tuesday, January 4

B. Professional Development

- **November 6th** - attended the Life Skills Sportsmanship Pep Rally
- **November 9th** - Mrs. Boden and Miss Petersen attended the monthly 21st century meeting (virtual).
- **November 15th**- Mr. Swanson hosted leadership walks with ESU/Oakland/Bancroft
- **November 15th** - The PAWS Leadership team reviewed the assessment results from the afterschool program review. The program received high marks and set a goal to engage more community groups in the program, and do a better job at having a formal process for training staff.
- **November 16th**: All staff attended a classroom culture training
- **December 1st**- Staff inservice- Curriculum work/mimio training

C. Other

- Nine elementary students were “hired” to be bank tellers at the Cougar Branch of First Northeast Bank of Nebraska after applying and going through an interview process.
- All-State Band- Arianne Brokaw attended All-State Band in Lincoln from November 17th-20th. (Clarinet)
- Mock Trial- Made it to the third round!
- Cultural Connections- Took students to the Memorial March to Honor Lost Children in Sioux City. They marched from War Eagle Monument to downtown Sioux City on November 24th.
- District Leadership Skills Events results attached-
- District One-Act report attached-
- Mr. Timm-NDE & Children's Hospital Press Conference in Omaha, emphasizing Vaccinations for 5-12 yr-old children, keeping schools open in-person
- LDNE student leadership team-
 - Created a team separate from the student council to help with transition back to being just LDNE. Also to help with our building project.

Lyons-Decatur Northeast FFA
2021-22 Results

District Leadership Skills Events

November 17, 2021

Employment Skills

Elise Anderson Purple, District Champion
**State Qualifier
Camryn Brehmer Purple

Natural Resources Speaking

Arienne Brokaw Purple, State Alternate

Creed Speaking

Miriell Brokaw Purple
Eyan Tuttle Blue

Public Speaking Junior Division

Aubrey Andersen Blue

Extemporaneous Speaking

Sydney Olsen Red

Parliamentary Procedure

Elise Anderson Purple, District Champion
**State Qualifier
Arienne Brokaw
Caleb Schlichting
Aubrey Andersen
Sierra Heckenlaible
Brayden Hegge

Parliamentary Procedure

Camryn Brehmer Blue
Colten Miller
Sydney Olsen
Tate Simonsen
Ashlynn Whitley
Masen Olsen

Conduct of Chapter Meetings

Miriell Brokaw Blue
Jake Christiansen
Keyton Kampa
Alexander Timm
Eyan Tuttle
Garret Vavra
Braxton Watson

District Sweepstakes Trophy

Lyons-Decatur Northeast Small Chapter Runner-Up

The Board of Education of the Lyons-Decatur School District No. 20 met in regular session on Monday, November 8, 2021 in the Secondary Library. Notice of the meeting was given in advance thereof by publishing notice in the Lyons Mirror-Sun designated method for giving notice. Notice of the meeting was given in advance to all members and agenda was communicated in the notice to the board of this meeting. All proceedings hereinafter were taken while the convened meeting was open to the attendance of the public. Present were Archer, Bacon, Brehmer, Christiansen, Miller, Myers, Petersen, Troutman, and Vlach. The open meeting laws are posted on the library wall.

Posted Locations: Lyons-Mirror Sun, lyonsdecaturschools.org, front door of the school.
Posted Date: October 28, 2021

Lisa Christiansen opened the meeting at 7:33 p.m.

Superintendent Report: Mrs. Beaudette discussed the dissolving of the current NEN softball cooperative and potentially options for the future. JH football numbers for the next two years were shared. The results from the LDNE survey were shared with the board and discussion was held on the future mascot and colors for the teams that are currently BRLD and transitioning back to LDNE; we will remain the Cougars with Maroon, Gold, and White as our colors. The superintendent evaluation form was presented to board members to complete and return to board president, Christiansen. The 2020-2021 school district audit report and board letter were provided for review.

Principal Report: Mrs. Totten and Mr. Swanson discussed the upcoming activities, staff changes, and professional development opportunities our staff have been apart of. A report was shared on Parent-Teacher Conference attendance and end-of-the-season activity reports.

American Civics Committee Report: Discussion was held about the LDNE curriculum, standards, patriotic instruction, and the American Civics Checklist. Public comment was offered at this time.

It was moved by Leah Miller, seconded by Corey Petersen, to approve the consent agenda Roll Call.

Archer: Aye, Bacon: Aye, Brehmer: Aye, Christiansen: Aye, Miller: Aye, Myers: Aye, Petersen: Aye, Troutman: Aye, Vlach: Aye
Aye: 9, Nay: 0

It was moved by James Vlach, seconded by Jaime Bacon, Approve Board Policies 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2016, 2017, and public participation guidelines, with delayed implementation until July 2022. Roll Call.

Archer: Aye, Bacon: Aye, Brehmer: Aye, Christiansen: Aye, Miller: Aye, Myers: Aye, Petersen: Aye, Troutman: Aye, Vlach: Aye
Aye: 9, Nay: 0

It was moved by Chad Brehmer, seconded by Corey Petersen, to approve Boyd Jones as our construction manager at risk for the proposed, potential building project. Roll Call.

Archer: Aye, Bacon: Aye, Brehmer: Aye, Christiansen: Aye, Miller: Aye, Myers: Aye, Petersen: Aye, Troutman: Aye, Vlach: Aye
Aye: 9, Nay: 0

The next regular board meeting will be held on Monday, December 13, 2021 at 7:30 p.m.

Meeting closed at 9:09 p.m.

I the undersigned, secretary of the School District of Lyons-Decatur Northeast, in the County of Burt, in the State of Nebraska, hereby certify that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for inspection at the office of the secretary, located in the main office of the school, Lyons Center, except those items of an emergency nature added at the meeting by motion and roll call vote, that such subjects were contained in said agenda for at least 24 hours prior to said meeting that said minutes of the Board of Education of the School District of Lyons-Decatur Northeast in the County of Burt, State of Nebraska were in written form and available for inspection by the public within 24 hours and prior to the next convened meeting of said body; that all news media requesting notification concerning meeting of said body

were provided advance notification of the time and place of said meeting and subjects to be discussed at said meeting.

Secretary, Board of Education

ATTEST:

President, Board of Education

The Board of Education of the Lyons-Decatur School District No. 20 met in regular session on Tuesday, December 7, 2021 in the Secondary Library. Notice of the meeting was given in advance thereof by publishing notice in the Lyons Mirror-Sun designated method for giving notice. Notice of the meeting was given in advance to all members and agenda was communicated in the notice to the board of this meeting. All proceedings hereinafter were taken while the convened meeting was open to the attendance of the public. Present were Archer, Bacon, Brehmer (arrived at 6:24 p.m.), Christiansen, Miller (arrived at 6:03 p.m.), Myers, Petersen, Troutman, and Vlach. The open meeting laws are posted on the library wall.

Posted Locations: Lyons-Mirror Sun, lyonsdecaturschools.org, front door of the school.

Posted Date: December 2, 2021

Lisa Christiansen opened the meeting at 6:01 p.m.

Discussion: The safety and security inspection report was shared with the board from October 27, 2021. The board discussed the potential building project and the key necessities that need to be addressed. Community members were invited for a tour and informational meeting.

Meeting closed at 8:37 p.m.

I the undersigned, secretary of the School District of Lyons-Decatur Northeast, in the County of Burt, in the State of Nebraska, hereby certify that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for inspection at the office of the secretary, located in the main office of the school, Lyons Center, except those items of an emergency nature added at the meeting by motion and roll call vote, that such subjects were contained in said agenda for at least 24 hours prior to said meeting that said minutes of the Board of Education of the School District of Lyons-Decatur Northeast in the County of Burt, State of Nebraska were in written form and available for inspection by the public within 24 hours and prior to the next convened meeting of said body; that all news media requesting notification concerning meeting of said body were provided advance notification of the time and place of said meeting and subjects to be discussed at said meeting.

Secretary, Board of Education

ATTEST:

President, Board of Education

Treasurer's Report

At the close of business November 30, 2021

Cash Balance on October 29, 2021 -583.42

Receipts for November 2021

Burt County	\$	63,747.09
Other County	\$	1,768.84
ESU #2 - Arts Grant/Cult. Connection	\$	664.06
Computer repairs	\$	19.00
High Ability Learner Grant	\$	3,164.00
Wesleyan	\$	750.00
State of NE - IDEA	\$	2,245.00
State Aid	\$	3,165.00
Village of Decatur-Licenses	\$	1,200.00
Interest	\$	0.04

Total Receipts	\$	76,723.03
Account Transfers	\$	324,000.00
Disbursements	\$	399,713.76

Cash Balance as of November 30, 2021 425.85

Outstanding Checks/deposits \$ 1,456.05

Ending Bank Balance as of November 30, 2021 \$ 1,881.90

SAVINGS BALANCE Beginning: \$1,479,179.11 ENDIING BALANCE \$1,165,499.38

Beth Doht

Treasurer

COMBINED ACCOUNT BALANCES
Depreciation, Employee Benefit Fund, Special Building, and Student Fee Fund
As of November 30, 2021

DEPRECIATION FUND

Balance \$112,881.72

EMPLOYEE BENEFIT FUND

Balance \$19,529.50

SPECIAL BUILDING FUND

Balance \$1,101,391.74

STUDENT FEE FUND

Balance \$0

TOTAL OF COMBINED ACCOUNTS \$1,242,334.70

GENERAL REIMBURSEMENT FUND

Checking account \$9281.91

ACTIVITY FUND

Balance \$85,219.97

COOPERATIVE FUND

Balance \$415.00

Treasurer's Report
LUNCH FUND

At the close of Business November 30, 2021

Cash Balance October 29, 2021	\$44,187.43
Receipts for November	\$27,851.02
Disbursements for November	\$26,506.22
Cash Balance November 30, 2021	\$45,532.23
Ending Bank Balance November 30, 2021	\$45,532.23

Expenditures for December

Payroll	\$11,972.54
Accounts Payable	\$13,432.69
Total	\$25,405.23

Check #	Vendor Name	Invoice	Description	Amount
Checking	1			
Checking	1 Fund: 01	GENERAL FUND		
25856	ACTIVITY FUND	20211108ACT	TURF ROOM RENTAL	100.00
			Vendor Total:	100.00
25857	ALLIED 100 LLC	2013650	AED SUPPLIES	96.95
			Vendor Total:	96.95
25858	AMAZON	445939355487	ERASERS	27.79
25858	AMAZON	445996374459	OFFICE CHAIR	54.94
25858	AMAZON	458649846887	HANDWRITING STAMP	31.98
25858	AMAZON	495747937946	SCANNER	639.99
25858	AMAZON	558367778436	SEC LIBR BOOKS	44.98
25858	AMAZON	754594487449	SECONDARY LIBRARY BOOKS	32.95
25858	AMAZON	983853979858	COIN WRAPPERS	7.99
			Vendor Total:	840.62
25859	AMERICAN BROADBAND CABLE	20211201AMBR	PHONE CHARGES	253.85
			Vendor Total:	253.85
25860	APPEARA	699658	SUPPLIES	141.02
			Vendor Total:	141.02
25861	BEAUDETTE, LINDSEY	20211130BEAU	MILEAGE	460.41
			Vendor Total:	460.41
25862	CHRISTENSEN ELECTRIC LLC	4643	INSTALL PHOTO EYE ON	211.40
			PARKING LOTS	
25862	CHRISTENSEN ELECTRIC LLC	4683	AG BLDG WELDING BAY SERVICE	90.00
			Vendor Total:	301.40
25863	CITY OF LYONS	20211110CITY	UTILITIES	9,809.47
			Vendor Total:	9,809.47
25864	CLASSIC CLEAN CARWASH	20211031CLCL	VAN WASH	6.00
			EAN	
25864	CLASSIC CLEAN CARWASH	20211130CLCL	VAN WASHES	20.00
			EAN	
			Vendor Total:	26.00
25865	CNA AUTO SERVICES	63975	SUPPLIES	21.72
25865	CNA AUTO SERVICES	63979	WHITE MINI-SERVICE/TIRES	502.14
25865	CNA AUTO SERVICES	64008	GRAY VAN-SERVICE	105.21
25865	CNA AUTO SERVICES	64049	BLUE MINI-TURN BULB	30.95
25865	CNA AUTO SERVICES	64078	GRAY VAN-AIR CLEANER TUBE	55.82
25865	CNA AUTO SERVICES	64110	EXHAUST FLUID	158.56
25865	CNA AUTO SERVICES	64164	VAN #5 TIRE REPAIR	15.23
25865	CNA AUTO SERVICES	64166	BUS #15 - SERVICE	256.15
25865	CNA AUTO SERVICES	64171	INSPECTIONS	1,190.00
25865	CNA AUTO SERVICES	6998	VAN #5 BRAKES	969.84
			Vendor Total:	3,305.62
25866	DECKER EQUIPMENT	407761A	CHAIR GLIDES	23.75
			Vendor Total:	23.75
25867	DEMCO INCORPORATED	70466714	LIBRARY SUPPLIES	606.83
			Vendor Total:	606.83
25868	DIGITAL DOT SYSTEMS, INC.	31783	REPAIR KEYBOARD	38.00
25868	DIGITAL DOT SYSTEMS, INC.	31784	REPAIR DISPLAY ON MACBOOK	505.00
25868	DIGITAL DOT SYSTEMS, INC.	31785	REPAIR DISPLAY ON MACBOOK	505.00
			Vendor Total:	1,048.00
25869	DIODE TECHNOLOGIES	9508	CAMERAS	7,549.01
25869	DIODE TECHNOLOGIES	9852	AG BLDG REPAIR	815.00
25869	DIODE TECHNOLOGIES	9873	REPLACE DOOR LOCK-AG	384.75
			Vendor Total:	8,748.76
25870	DOHT, ELIZABETH	20211017DOHT	MILEAGE	176.28
			Vendor Total:	176.28

Check #	Vendor Name	Invoice	Description	Amount
25871	EDUCATIONAL SERVICE UNIT #2	PD1019216	LEADERSHIP MEETING	20.00
			Vendor Total:	20.00
25872	FIRST NATIONAL BANK OMAHA	20211130FNBO	GOOGLE VOICE, DOOR BLOK	61.99
			Vendor Total:	61.99
25873	FOLLETT SCHOOL SOLUTIONS INC.	344218A	LIBRARY BOOKS	450.80
25873	FOLLETT SCHOOL SOLUTIONS INC.	344218F	LIBRARY BOOKS	101.32
25873	FOLLETT SCHOOL SOLUTIONS INC.	344218F-0001	LIBRARY BOOKS	101.32
25873	FOLLETT SCHOOL SOLUTIONS INC.	354606A	LIBRARY BOOKS	487.73
			Vendor Total:	1,141.17
25874	FRANCISCAN HEALTHCARE	20211130FRAN	PT SERVICES	1,350.80
			Vendor Total:	1,350.80
25875	FRERICHS, CRAIG	20211027FRER	SAFETY VISIT ICHS	435.00
			Vendor Total:	435.00
25876	HIRERIGHT LLC	P1072195	BACKGROUOND CHECKS	31.40
			Vendor Total:	31.40
25877	HOLIDAY INN-KEARNEY	83847	AD CONFERENCE ROOM	219.90
			Vendor Total:	219.90
25878	HOME DEPOT PRO, THE	647319094	SOAP DISPENSER	0.15
25878	HOME DEPOT PRO, THE	650309107	CARPET CLEANER REPAIR	304.89
25878	HOME DEPOT PRO, THE	650582810	FILTERS	48.63
25878	HOME DEPOT PRO, THE	651957011	URINAL SCREENS	40.86
25878	HOME DEPOT PRO, THE	653032755	SANITIZER	74.03
25878	HOME DEPOT PRO, THE	653032763	VACUUM CLEANER	819.02
25878	HOME DEPOT PRO, THE	653032771	ESSRS-VACUUM	372.63
25878	HOME DEPOT PRO, THE	653032789	CARPET CLEANER SUPPLIES	28.28
25878	HOME DEPOT PRO, THE	653032797	SANITIZER	74.03
25878	HOME DEPOT PRO, THE	654390764	FILTER BAGS	19.25
25878	HOME DEPOT PRO, THE	654901982	VACUUM BAGS	5.27
25878	HOME DEPOT PRO, THE	655212587	BOWL CLEANER	22.22
25878	HOME DEPOT PRO, THE	655486157	CLEANING SUPPLIES	238.92
			Vendor Total:	2,048.18
25879	JENSEN PLUMBING & HEATING	20211025JENS	LIBRARY HEAT/WINTERIZE SPRINKLERS	294.09
25879	JENSEN PLUMBING & HEATING	20211111JENS	CLEAN SEWER EN	175.00
25879	JENSEN PLUMBING & HEATING	20211118JEN	LIBRARY HEAT	60.00
			Vendor Total:	529.09
25880	KB'S MINI MART, INC.	20211130KBS	GAS/FUEL	3,669.50
			Vendor Total:	3,669.50
25881	KNAAK, BRUCE	20211130KNAK	MILEAGE	336.00
			Vendor Total:	336.00
25882	KSB SCHOOL LAW	11046	LEGAL FEES	3,497.68
			Vendor Total:	3,497.68
25883	LINCOLN MARRIOTT CORNHUSKER	20211119CORN	ALL STATE MUSIC ROOMS H	448.00
			Vendor Total:	448.00
25884	LYONS MIRROR SUN	203028	NOTICES	61.65
25884	LYONS MIRROR SUN	203986	NOTICES	25.20
			Vendor Total:	86.85
25885	LYONS SAVEMORE MARKET	20211201SAVE	SUPPLIES	41.74
			Vendor Total:	41.74
25886	LYONS-DECATUR LUNCH PROGRAM	20211115LF	MEALS	170.15
			Vendor Total:	170.15
25887	MATHESON TRI-GAS, INC	51883473	SUPPLIES	396.25
			Vendor Total:	396.25
25888	NEBRASKA SAFETY CENTER	57-9503	LEVEL 1 CLASS	200.00

Check #	Vendor Name	Invoice	Description	Amount
			Vendor Total:	200.00
25889	OAKLAND LUMBER LLC	2531 2651	SUPPLIES	899.66
			Vendor Total:	899.66
25890	ONE SOURCE	PLUS1726- 20211130	BACKGROUND CHECKS	66.00
			Vendor Total:	66.00
25891	OPC DIRECT.	1067373	TOILET TISSUE	428.05
25891	OPC DIRECT.	1068599	PAPER TOWELS	340.88
			Vendor Total:	768.93
25892	PITNEY BOWES GLOBAL FINANCIAL	3314693576	POSTAGE MACHINE RENT	252.54
			Vendor Total:	252.54
25893	PITNEY BOWES INC	20211201PITN EY	POSTAGE	300.00
			Vendor Total:	300.00
25894	PLUNKETT'S PEST CONTROL	7342076	PEST CONTROL	51.88
			Vendor Total:	51.88
25895	QUILL CORPORATION	20723816	SUPPLIES	187.51
25895	QUILL CORPORATION	20724673	CALCULATOR RIBBON	15.29
25895	QUILL CORPORATION	20928177	ENVELOPES	84.17
			Vendor Total:	286.97
25896	ROMANS WIEMER & ASSOCIATES	20211118ROMA NS	AUDIT	6,900.00
			Vendor Total:	6,900.00
25897	SCHLICKBERND'S HARDWARE & APPLIANCE	19279	WASHING MACHINE-ESSRS	599.00
			Vendor Total:	599.00
25898	SCHOLASTIC LIBRARY PUBLISHING	34525440	TRUEFLIX	732.00
			Vendor Total:	732.00
25899	SCHOOL SPECIALTY SUPPLY INC	208129039097	STOOLS-5TH GR	706.20
			Vendor Total:	706.20
25900	SCIENCE NEWS MAGAZINE	20211127	SUBSCRIPTION	25.00
			Vendor Total:	25.00
25901	SIOUX CITY MERCY MEDICAL CLINIC - PP	20211119MERC Y	DRIVER PHYSICALS-BK, JB, MR	300.00
			Vendor Total:	300.00
25902	SMITH, MELISSA	20211130SMIT H	LIBR SUPPLIES	56.90
			Vendor Total:	56.90
25903	STEINY'S FARM REPAIR	53126	BUS #5 - STEERING WHEEL	728.73
			Vendor Total:	728.73
25904	STEINY'S GENERAL STORE	20211201STEI N	SUPPLIES	431.78
			Vendor Total:	431.78
25905	US BANK EQUIPMENT FINANCE	458843760	COPIER LEASE	415.79
			Vendor Total:	415.79
25906	VON SEGGERN, VANESSA	20211130VV	TRAVEL EXP	31.25
			Vendor Total:	31.25
25907	VOSS LIGHTING	10208020-00	EMERGENCY LIGHT BULBS	35.38
			Vendor Total:	35.38
25908	WASTE CONNECTIONS OF NE, INC.	6110104	TRASH REMOVAL	481.00
			Vendor Total:	481.00
25909	WISNER-PILGER SCHOOL	20211130WISN ER	SOFTBALL EXPENSES	3,154.14
			Vendor Total:	3,154.14
			Fund Total:	57,845.81
			Checking Account Total:	57,845.81

<u>Check #</u>	<u>Vendor Name</u>	<u>Invoice</u>	<u>Description</u>	<u>Amount</u>
1162	OLSSON	403341	TOPO SURVEY	7,600.00
Vendor Total:				7,600.00
Fund Total:				7,600.00
Checking Account Total:				7,600.00

<u>Checking</u>		6						
<u>Checking</u>		6	Fund: 06	SCHOOL LUNCH FUND				
9435	CASH-WA DISTRIBUTING			13147121	FOOD			585.39
9435	CASH-WA DISTRIBUTING			13156396-0001	FOOD			519.94
9435	CASH-WA DISTRIBUTING			13174000	FOOD			1,198.36
				Vendor Total:				2,303.69
9436	HILAND DAIRY FOODS COMPANY LLC			0443753	FOOD			395.09
9436	HILAND DAIRY FOODS COMPANY LLC			0443806	FOOD			328.76
9436	HILAND DAIRY FOODS COMPANY LLC			0443858	FOOD			373.73
9436	HILAND DAIRY FOODS COMPANY LLC			0443904	FOOD			312.00
9436	HILAND DAIRY FOODS COMPANY LLC			0443956	FOOD			265.75
9436	HILAND DAIRY FOODS COMPANY LLC			0444008	FOOD			261.55
9436	HILAND DAIRY FOODS COMPANY LLC			0444060	FOOD			434.50
9436	HILAND DAIRY FOODS COMPANY LLC			0444164	FOOD			353.28
				Vendor Total:				2,724.66
9437	LYONS SAVEMORE MARKET			12012021	food			972.09
				Vendor Total:				972.09
9438	SYSCO FOOD SERVICES			361971022	FOOD			1,905.31
9438	SYSCO FOOD SERVICES			361984934	FOOD			2,390.03
9438	SYSCO FOOD SERVICES			361996714	FOOD			1,227.84
9438	SYSCO FOOD SERVICES			461009335	FOOD			1,909.07
				Vendor Total:				7,432.25
				Fund Total:				13,432.69
				Checking Account Total:				13,432.69

Net Payroll	\$176,966.29
Employee Deductions	80,420.68
District SS/Medicare	19,279.53
District Health/Life/HSA	59,322.46
District Retirement	<u>24,062.70</u>
PAYROLL	\$360,051.66
ACCOUNTS PAYABLE	<u>\$ 57,845.81</u>
TOTAL GENERAL FUND EXPENDITURES	\$417,897.47
SPECIAL BUILDING EXPENSES	\$ 7,600.00
LUNCH FUND	\$25,405.23

Secretary, Board of Education

ATTEST:

President, Board of Education

2009
Public Participation at Board Meetings

The board of education shall conduct its meetings in accordance with the Nebraska Open Meetings Act.

The board shall make reasonable efforts to accommodate the public's right to hear the discussions and testimony presented at its meetings. The board shall make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed in open session of the meeting.

The board is not required to allow citizens to speak at each meeting, but it will provide the opportunity for public participation at least four times per year. The board may make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, photographing, or recording its meetings.

The board shall not require members of the public to identify themselves as a condition for admission to the meeting, nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. However, the board shall require members of the public desiring to address the board to identify themselves, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

Adopted on: December 13, 2021

Revised on: _____

Reviewed on: _____

4063

Extra Duty and Extended Contract Assignments for Certificated Staff

This policy details the methods of payment for performance of extra duty and extended contract assignments by certificated staff members. Noncertificated staff should refer to their individual employment contracts regarding service hours and payment for extracurricular sponsorship activities which may be assigned to the employee by the district.

Extra Duty Assignments

Certificated staff members may be assigned extra duties such as coaching a sport, sponsoring a student club, or directing other extracurricular activities. Extra duty assignments shall be assigned at the discretion of the administration.

Full time certificated staff who are anticipated to work more than 1100 hours each school year are expected to work additional hours each month of the contract year in fulfillment of their extra duty assignments. Part-time certificated staff who are anticipated to spend fewer than 1100 hours in their regular teaching assignments each school year must track the hours they spend on extra duty assignments and submit those hours to the district bookkeeper monthly.

Certificated staff covered by the collective bargaining agreement between the board and the local education association will be paid the salary amounts set in that contract for performance of their extra duties.

Subject to the other provisions of this policy, certificated employees assigned to extra duty assignments shall be paid in 12 equal installments beginning with the first regular pay period of the contract year in which the services will be rendered. The payment for exempt employees assigned extra duty sponsorship duties after the beginning of their contract for a given school year shall be distributed evenly across the remaining pay periods for the school year beginning with the first pay period following the assignment.

Certificated employees who are assigned extra duties will be informed of that assignment in an assignment letter.

In addition to their regular teaching duties, teachers with extra duty will render service hours toward the performance of each of their extra duty assignments throughout the entirety of the contract year. This time should include tasks such as: continuously reviewing best practices for coaching/sponsoring your extra duty; determining any off-season professional

development or meetings which you should attend; determining any pre-season or pre-event camps or activities which students should attend; supervising selected pre-season camps or activities; creating records and completing paperwork related to the extra duty; communicating with selected media outlets about the extra duty; training and preparing students prior to the beginning of the competition/activity/event schedule; reviewing or planning the competition/event schedule; studying film, selecting music or scripts, designing sets and costumes, arranging choreography and otherwise preparing for the competition or season; scheduling student meetings and events; actively supervising participating students before, during and after the season/event; study of best practices in sportsmanship and student character growth; and any other identified duties.

In the event a certificated staff member is assigned an extra duty assignment after the beginning of the school year in which the activity occurs, the district will report the extra duty pay and hours to the Nebraska State Retirement System beginning in the month when the teacher undertakes his/her assignment.

In the event a certificated staff member's overall employment and/or extra duty assignment is terminated prior to the end of the school year, he/she will not be paid any remaining amounts for extra duty service and those hours will not be reported to the Nebraska State Retirement System.

Extended Contract Days

If a certificated staff member is assigned extended contract days, that assignment shall be included in his/her individual employment contract with the board of education. Staff shall be compensated for assigned extended contract days at the individual employee's daily contract rate calculated by dividing his/her regular salary by the number of contract days set by the board for all certificated teaching staff.

[OPTION 1]

Unless otherwise directed by the administration, extended contract days shall be completed prior to the first regular duty day for teachers for the impending contract year. Teachers must document their completion of extended contract days on the form provided by the office and submit that form to their direct supervisor at the end of each month.

[OPTION 2]

Unless otherwise directed by the administration, extended contract days shall be completed after the last regular duty day for teachers. Teachers must document their completion of extended contract days on the form provided by

the office and submit that form to their direct supervisor at the end of each month.

Payment for Extended Contract Days

[OPTION 1]

Teachers assigned to extended contract days shall be paid for that assignment in 12 equal installments beginning with the first regular pay day of the contract year in which the services are rendered.

[OPTION 2]

Payment for extended contract days will be made in the pay period following the date on which the extended contract days are completed.

Adopted on: December 13, 2021
Revised on: _____

Reviewed on: _____

Assignment Letter

Date

Dear _____:

This letter is to inform you that the school district's administration has assigned you to perform the extra duties indicated below for the _____ school year. You will receive extra duty pay for each of these assignments as provided for in the district's negotiated agreement with the local education association. This extra duty salary will be paid in 12 equal installments beginning with the first regular pay period of the contract year in which the services will be rendered.

Assignment	Annual Extra Duty Pay	Amount of Extra Duty Pay per Pay period

Your extra duty assignment will begin on or about June 1 and will conclude on or about May 31 of the upcoming school year. Your extra duty pay will begin about September 1 and will conclude on or about August 30 of the upcoming school year.

As a full-time certificated employee, it is anticipated that you will work more than 1100 hours based solely on your teaching assignment. In addition to your regular teaching duties, you will render service hours toward the performance of each of your listed extra duty assignments throughout the entirety of the contract year. You will dedicate time each month of the contract toward fulfilling your extra duty assignment. In the exercise of your professional judgment, this time should include

tasks such as: continuously reviewing best practices for coaching/sponsoring your extra duty; determining any off-season professional development or meetings which you should attend; determining any pre-season or pre-event camps or activities which students should attend; supervising selected pre-season camps or activities; creating records and completing paperwork related to the extra duty; communicating with selected media outlets about the extra duty; training and preparing students prior to the beginning of the competition/activity/event schedule; reviewing or planning the competition/event schedule; studying film, selecting music or scripts, designing sets and costumes, arranging choreography and otherwise preparing for the competition or season; scheduling student meetings and events; actively supervising participating students before, during and after the season/event; study of best practices in sportsmanship and student character growth; and any other identified duties:
_____.

In the event you are assigned an extra duty assignment after August 1 of the school year in which the activity occurs, the district will report the extra duty pay and hours to the Nebraska State Retirement System beginning in the month when you undertake your assignment.

In the event your overall employment and/or your extra duty assignment is terminated prior to the end of the school year, you will not be paid any remaining amounts for extra duty service and those hours will not be reported to the Nebraska State Retirement System.

If you have any questions about your assignments, please contact my office.

Sincerely,

Superintendent of Schools

I acknowledge receipt of this assignment letter on _____, 202_.

Teacher

KAREN A. HAASE
STEVE WILLIAMS
BOBBY TRUHE



COADY H. PRUETT
JORDAN JOHNSON
SHARI RUSSELL, Paralegal

M E M O R A N D U M

We have attached the 3000 series policies that deal with Business Operations.

Policy 3001. Budgets. This policy deals specifically with creating budget and related requirements. It notes that the Superintendent is responsible for developing the budget.

Policy 3002. Deposits. This policy sets out general guidelines for how to handle money collected by the district. Note that the procedures outlined in this policy apply to anyone acting on behalf of the district, which includes employees, students and volunteers. Your board should determine the amount of cash that it is comfortable in keeping in the building overnight.

Policy 3003. Bidding for Construction, Remodeling, Repair, or Site Improvements. This policy sets out the process that the board will follow when it is going to solicit bids for construction and related projects.

The second section sets out the process that the District will follow when it is undertaking a construction project that has an anticipated cost of less than \$100,000. Under state law, school districts are only required to engage in the formal solicitation of bids when they are undertaking construction with a cost of more than \$100,000, but most districts want to follow some structured process for obtaining quotes or estimates before they begin smaller projects. This section also includes the ability for the district to use the ESUCC Coop for these non-bid projects.

The third section sets out the formal requirements of Nebraska's bidding statutes.

Policy 3003.1. Bidding for Construction, Remodeling, Repair, or Related Projects Financed with Federal Funds. This policy sets out the requirements that you must follow when you use federal funds for construction. Please note that this policy will apply to any construction financed with federal funds, regardless of how much the anticipated project

will cost. If the construction project has an anticipated cost of more than \$100,000, then you will have to comply with both policy 3003 and 3003.1.

Policy 3004. General Purchasing and Procurement. This policy sets out general guidelines for purchasing equipment and supplies which are not purchased with federal funds. Please review it carefully to be sure that it accurately describes your process in a general way. Note that there is a provision in this policy which states that use of statewide cooperative purchasing programs for school districts, such as ESUCC's Coop Purchasing, satisfies any requirement under this policy or state law to the extent such a bid or quote is not otherwise independently required by law.

The board must make a decision about two parts of the fourth section of this policy. You must tell staff how many days prior to a board meeting they have to submit receipts for reimbursement. You must also set the amount at which you will require staff to secure written quotes and/or estimates. Due to the way the federal regulations work, we strongly urge you to set that limit at **\$10,000**. As you will see, the EDGAR regulations have one set of rules for purchases under \$10,000, another set of rules for purchases between \$10,000 and \$250,000, and a third set of rules for purchase over \$250,000. We think it will be confusing for the district to adopt a fourth set of rules for purchases below \$10,000 but above some other limit set by the board. Having said all that, the board is certainly entitled to adopt a lower threshold than \$10,000 in this policy because it applies to purchases not made with federal funds.

Policy 3004.1: Fiscal Management for Purchasing and Procurement Using Federal Funds. This policy sets out all of the elements that are required by the Education Department General Administrative Regulations (EDGAR). These regulations apply to all federal grants that are made by the US Department of Education to local school districts directly and to all funds that pass from the federal government through state departments of education to local schools. That means you will need to follow this policy for purchases for your food program, special education, Title I and any other federal program. The first section recites that this policy will only apply to purchases made with federal dollars. This keeps your staff from having to jump through the hoops in this policy if they are spending state or local funds. All of your staff who work in areas where federal funds are spent (cooks, special ed and Title I paraeducators, etc.) should be trained on this policy.

Policy 3005. School Activities Fund. This policy governs school activity funds and it provides that funds remaining after graduation may be transferred to any district account. Notice that this policy attempts to address

the problem of unspent senior class funds by permitting the funds to be transferred at the board's discretion or kept in that class's fund. If your board follows a different practice, contact us or your regular school attorney to be sure that your practice is lawful.

Policy 3006. [Intentionally Left Blank]

Policy 3007. Review of Bills. This policy provides a good set of checks and balances which is always a subject of focus for the State Auditor.

Policy 3008. Grants, Gifts and Bequests. Although it is generally a good thing when people want to give the school district donations, boards need to have control over what is donated and how it is used. This policy allows the superintendent to accept the donation of personal items (like coats for a winter closet drive) and of cash donations up to a limit set by your board. All other donations must be approved by the board.

Policy 3009. Audits. This policy states that you will obtain an annual audit as required by law. It also states that the district does not use generally accepted accounting principles. Most schools do not have the staff or other resources to comply with GAAP and state statute specifically provides that schools do not have to follow GAAP. Nonetheless, the state auditor will frequently criticize schools for not following GAAP. This policy will help schools defend against that sort of criticism.

Policy 3010. Insurance. This policy addresses insurance as it relates to protecting the school district, the board as a corporate body, individual board members, appointed officers, employees, and volunteers from financial loss arising from any claim, demand, suit or judgment. The school district's insurance should be reviewed annually or as the need arises.

Policy 3011. Transportation. This policy addresses transportation. Please review it to make sure it is consistent with your transportation plan. If you have adopted a different plan, substitute yours for our form plan. If you would like us to review it, please e-mail it to us.

Policy 3012. School Meal Program. This policy addresses the provision of a meal program for students and the meal charge policy. The Meal Program section outlines the district's responsibilities to create a program, set costs, and/or contract with a private company to manage the program. It also states that the district will notify families of the costs and the procedure for signing up for free or reduced-price meals. The Meal Charge Policy outlines the district's duty under federal regulations to establish procedures and provide notice for how the school will handle student meals

when a student's meal account is delinquent. We have provided four options for boards to choose from.

Policy 3013. Emergency Closings. This policy on emergency closing states that school will be held on each day of the school calendar unless the superintendent determines that school should not be in session. Note that the policy uses the "impossible or impracticable" wording from the mandatory attendance statute, which should support the district if a parent ever claims bad weather as a defense to a truancy charge.

Policy 3014. Use of School Property. Over the last several years, schools and ESUs in Nebraska have seen an increase in the variety and frequency of groups wanting to utilize district facilities. Districts in Nebraska and throughout the country have been involved in significant litigation regarding facility use, and many others have been forced to resolve facility use questions with entities like the ACLU. In response, our policy takes a comprehensive look at these issues. We will highlight the main provisions for your board to focus on, below:

Accounting for "Regular Uses." Many districts permit patrons to use facilities such as the weight room and track on a regular basis. Some districts have designated hours, and others permit patrons to keep keys or fobs to access the facilities. Most districts use some sort of application and agreement for these uses separate from their general facility use application. The first section of the policy is an attempt to capture these regular, individual uses and permit them with only one application. We have also included an Application, Release, Waiver, and Agreement document. Rather than requiring patrons to apply for a facility use permission every time, we hope this one-time application process protects the district to the maximum extent possible and eases the administrative burden when patrons use the facilities regularly.

Prohibiting Commercial Use. This is a very tricky area for many districts. Most districts do not want to turn the school and school activities into shopping malls. However, most schools do want to permit booster clubs and student groups to raise funds which support school students and activities. From a purely legal perspective, the district is almost always better off prohibiting others from profiting by using district facilities. One recent example is an athletic trainer who wanted to host a workout class in the school weight room and charge money for patrons to attend. The trainer sought to take advantage of the facility being open to

community use and planned to use the district's equipment and facilities rent-free to host the class. As a result of requests like this, we have written the policy to prohibit commercial uses which result in personal financial gain. If your district has a practice of permitting commercial uses, such as fitness classes, for-profit craft fairs, and other such events, you should contact us directly to assist you in preparing a policy provision which best protects the district.

Redefined Groupings. The policy breaks out groups using facilities into four separate categories: curriculum-related student groups, extracurricular student groups, non-curriculum related student groups, and non-student groups. This grouping system closely tracks the Supreme Court cases and assists in drawing clearer lines for requirements of various groups depending upon their alignment with district curriculum and activity offerings. For example, the policy says that all student groups are given priority over other outside groups.

Charging Fees for Admission. The last section of the policy prohibits groups which use school facilities from charging admissions fees. This is a *major* question in many districts, and our provision may not be consistent with your district's practices and preferences for supporting your community groups. **Please read this section carefully and be sure to discuss it fully with your entire board.**

The Political Subdivision Tort Claims Act exempts schools from liability when their facilities are used for "recreational" purposes, but only if the group using facilities does not charge a fee to participate in or spectate the event. Likewise, if the district maintains control over the event/facilities, such as providing supervision or custodial services, the protection from liability may not apply.

These protections came about as a result of court cases where political subdivisions were sued because someone attending an event held in public facilities was injured. In one case, for example, a patron suffered an ankle injury stepping in an animal burrow on a courthouse lawn during a town celebration. The public policy behind these protections says that schools should be encouraged to permit others to use their facilities. As an incentive to permit the recreational use of district facilities, school districts should not be held liable for damages suffered

when patrons are participating or spectating "recreational" activities on school grounds. The definitions in the statutes are quite broad, providing protection to schools in many cases.

However, in order to maintain the protections of this law, schools cannot permit outside groups to charge a fee to attend the facility and cannot maintain control over the facility. If someone has to pay a fee to attend an activity, and if the district maintains control over the facility, then the patron(s) has a greater expectation of protection from possible dangers. But if the school does not maintain control and the entity using the facility does not charge an admission fee, the district is only liable for its "gross negligence" rather than standard negligence.

As you can see, this is one of the more complex policies in our service. Please feel free to call us and work through these issues one-by-one whenever it is convenient for you.

Policy 3015. Time Away From School Activities. This policy states that school activities will not be held on Wednesday nights or Sundays. This policy intentionally considers these days "time away from activities" and specifically and intentionally does not contemplate the types of activities in which students may be engaged on those days. **If you have other days designated for time away from school activities, modify the policy accordingly.**

Policy 3016. Smoking. Many districts are struggling with effective policy solutions to electronic cigarettes, vapor pens, and similar technology. In 2014 the Unicameral made it a criminal violation for any minor under the age of 18 to use "vapor products or alternative nicotine products." Accordingly, we recommend that your general tobacco use policy to include an option which prohibits the use of vape pens, electronic cigarettes, and the like. While this policy applies to all students and staff, it applies generally to all district patrons and visitors. This policy has 3 options. You should select one or a combination of these policies.

Policy 3017 Press Releases. This policy requires administrative approval of press releases regarding school-related activities and events.

Policy 3018. Denial of Access to School Premises. This policy provides a method for denying access to school activities or school premises. It permits an administrator to limit or deny access to certain school activities or school premises for various reasons.

Policy 3019. Sale or Disposal of School Property. This policy states that the sale of school property must be made with the best interests of the school and taxpayers in mind. It sets forth the statutory requirement that the sale of school property be approved by a two-thirds vote of the board of education at a regular board meeting.

Policy 3020. Copyright Compliance. This policy addresses copyright compliance and discusses the steps district administrators must take or may take when an infringement occurs. It states that teachers and students may not use any media in a manner that is in violation of applicable copyright laws. If staff or students subject the district to payment for copyright violations, the district may require the offending student or staff member to make the district whole. **Please note: even if there is a technical infraction which occurs because of a staff member or student, one protection for educational institutions against copyright liability is to distribute materials and provide training to staff and students about the importance of copyright compliance. This policy requires you to distribute materials to students and staff for the purpose of preserving that defense.**

Policy 3021. Operation of School Business Office This policy describes the days and hours that the business office will be open. Some boards prefer that the district's business office be open during regular business hours. **You should revise the policy to describe the district's practice.**

Policy 3022. Volunteers. This policy addresses the use of volunteers. We recommend having most volunteers sign a volunteer services agreement, though we recognize that in some instances the volunteer's involvement will be insubstantial. The policy also prohibits people from volunteering if they refuse to comply with a requested background check. If you need assistance in creating or updating your volunteer services agreement, we would be happy to help

Policy 3023. Record Management and Retention. School districts must comply with two sets of laws governing the retention and deletion of records. The Federal Rules of Civil Procedure require government entities to retain some electronic records with metadata intact and to state with specificity when they will delete electronic records. Nebraska's Records Management Act and the record retention schedules adopted by the Nebraska Secretary of State's Record Management Division outline when schools may delete both physical and digital records. The schedules which apply to school districts are Schedule 10 and Schedule 24. This policy outlines how the school district will comply with all of these various laws and regulations.

This policy has several options for you to adopt, depending on whether you use a cloud-based productivity suite and, if so, which suite you use. If you use a cloud-based service such as Google Apps for Education or Office 365, you will need to select the retention level you have selected from your service provider. If you still use internal servers to host your e-mail, you will need to consult with your technology coordinator to determine how long the district stores e-mail and other electronic data. There is no obligation to retain all of your e-mail in their original format, but you must identify your retention schedule for these records.

Under Schedule 24, "short term communications" must be maintained for at least 6 months, which is why we have included that retention period for school-affiliated social media posts. Please note that all this means is that staff using school-affiliated social media posts cannot delete their posts for at least 6 months. If you use Twitter, for example, to announce sports scores, you just cannot go back and delete old Tweets at the end of the school year. You do not have to print these posts -- leaving them on the social media application counts as "maintaining" under the schedules.

Your retention obligations for security video is covered by Schedule 24. After consulting with the Secretary of State's office, we have categorized security video as "working papers" which can be destroyed as soon as the school determined that there is no need to keep it. Schools will have to complete an annual disposition report regarding this footage. The Secretary of State's Office was gracious enough to provide us with a sample disposition report on security video footage, which we have included as an example with the forms for the 3000 series.

Policy 3024. Booster Clubs and Parent Teacher Organizations.

This policy addresses booster clubs and parent-teacher organizations. There are two variations that can be used. In both cases, we suggest that the district: (1) take complete control over the organization's finances or (2) keep the school's finances and the organization's finances completely separate. Regardless of which approach is used, the key is to make the relationship clear in the policy. We have attached policies which address both situations.

Policy 3025. Returned and Outstanding Checks. This policy deals with insufficient fund checks. It states that a person who wrote a bad check must pay the school the amount of the check in cash plus an additional \$30 (the board should choose the amount) to cover costs to the district. It also gives the district the authority to refuse to accept checks from people whose checks are repeatedly returned for insufficient funds. The policy also addresses checks which are outstanding and authorizes the superintendent to review them and resolve any issues related to outstanding checks, including

stopping payment and reissuing the checks. **These terms are not statutorily required and the board may set its own standards.**

Policy 3026. Handbooks. This policy covers handbooks. It states that handbooks are intended to convey information and explain school regulations and procedures. It points out that the handbooks are not contracts and that the administration has the authority to change handbook provisions during the year so long as the changes are consistent with board policy. It also makes clear that the handbooks are trumped, when inconsistent, by board policy and state law.

Policy 3027. Resolution of Conflicts Between Parents Over School Issues. This policy addresses the resolution of conflicts between parents over school issues. It explains that the school will not become involved in disputes between parents regarding such issues as court orders, student records, and picking up children at school.

Policy 3028. Sex Offenders. This policy deals with sex offenders and emphasizes the importance of students' safety at school. It states that the school will notify staff members, parents, and students (1) of any registered sex offenders residing in the school district and (2) of the availability of information about sex offenders on the State Patrol's web page. If your district does not distribute this list to staff, parents, and students, you should.

Policy 3029. Distribution of Flyers Advertising Non-School Issues. This policy addresses the distribution of flyers advertising activities of non-school organizations. The first numbered paragraph sets forth prohibitions against flyers with statements that are inappropriate for a school setting. The remaining paragraphs set forth procedures and requirements for flyers.

Policy 3030. Automatic External Defibrillator Program. This policy deals with automatic external defibrillators (AED). Some organizations offer to donate both the AED and the cost of its upkeep. The attached policy is designed to limit the school district's potential liability while incorporating the policy elements recommended by the American Medical Association and the American Heart Association. You will have to identify a medical advisor and should be sure that the person designated as the AED Program Coordinator understands his/her obligations under the policy and is willing to fulfill those responsibilities. **Note that you will have to identify a Program Coordinator and Medical Advisor.**

Policy 3031. Students Electing to Attend School in Adjoining State. This policy addresses requests for students to attend schools in an

adjoining state. It restricts approval of out-of-state enrollment except when (1) the student will suffer extreme and unusual harm if not allowed to attend school in an adjoining state; or (2) the district's financial circumstances will be unaffected by the out-of-state transfer.

Policy 3032. Copyrighting Fees for School District Records. addresses the copying fees for School District Records should they be requested. You will have to identify what amount you will charge for each request.

Policy 3033. Lending Textbooks to Children Enrolled in Private Schools. This policy complies with Rule 4 of the Nebraska Department of Education. It addresses lending textbooks to children enrolled in private schools and the process for individuals to fill out an application for the textbooks. The procedures and timelines laid out in the policy are required by NDE.

Rule 4 has a very broad definition of the term "textbook." Although we do not recite that definition in the policy itself, administrators and boards should understand that "textbook" includes digital resources and subscriptions:

Textbook shall mean any instructional material that is designated for use by individual students in classroom instruction as the principal source of study material, in any of grades kindergarten through grade 12 in the public school(s) of each school district. The following, if designated for use by individual students as the principal source of study material, are likewise to be considered textbooks for purposes of this chapter: multiple texts; electronic and digital subscriptions; and hard-copy, write-in work texts if accessible by students pursuant to a multi-year subscription entered into by the school district. Instructional material that is in a non-tangible, electronic or digital format, e.g. web-based (on-line) material, accessible by students through a subscription or license agreement entered into by the school district, is a textbook if the individual student's access ceases within the timeframe described in Section 003.01 of this chapter. The following are not to be considered textbooks: library books, teacher's editions, hard-copy supplemental workbooks and any book or material designated for classroom, and not individual use (e.g. "Big Books" and the like).

For many years, when homeschool parents have asked to borrow textbooks from the school district, it has merely been a matter of loaning out an extra book, which did not impose any additional cost on the school. With this much

broader definition of “textbook” homeschool and private school parents could seek to access digital textbooks or other electronic resources. If the school pays a per-user subscription for these resources, the district is not required to pay that cost for the homeschool or private school student. Instead, the district requests funds from NDE to pay for the requested resource. You may also add up to 5% of the cost to defray administrative expense. Then the department will respond to the request by informing the schools whether there are sufficient funds to pay for the requested resource. Schools are only obligated to purchase and lend textbooks only to the extent that the Legislature appropriates funds to the Nebraska Department of Education to be distributed for this purpose.

Policy 3034. [Intentionally Left Blank]

Policy 3035. Chain of Command. This policy was created in response to requests from several of our school district clients to provide more effective and efficient assistance to patrons and employees with questions or concerns. You should review this carefully to be sure it accurately describes how your district's chain of command operates.

Policy 3036. Purchasing (Credit) Card Program. Many school districts in Nebraska use credit cards to purchase goods and services for school purposes. However, many schools are unaware that, though state law authorizes the use of such credit cards, it also imposes certain obligations upon the district. In addition, the Nebraska Auditor of Public Accounts has chastised some schools in their audits because school personnel failed to maintain adequate supporting documentation for credit card expenses in violation of state law and school district policy. This policy includes everything required by state law and incorporates recommendations made by the State Auditor in previous school district audits. It also tracks changes to federal purchasing and procurement and allows continuity of your purchasing system. After you adopt the policy, we strongly encourage you to provide a copy of it to all employees and require them to acknowledge that they have received and read it.

Policy 3037. Petty Cash. The Nebraska State Auditor expressed concern during a recent audit that a school district maintained a petty cash fund without adopting any policy or procedures governing its use. The auditor was particularly concerned about the lack of monitoring and oversight of the fund. If you do not use petty cash, you do not need a policy. However, if you do utilize such a fund, we strongly encourage you to adopt a policy that spells out its amount, who controls it, when it may be used, monitoring procedures, etc. You should review this policy with the administration and the board to make sure that it conforms to your actual practice.

Policy 3038. [Intentionally Left Blank]

Policy 3039. Threat Assessment and Response. Schools are required to have a “threat assessment” procedure which they are supposed to use any time someone reports a threat made by a student, staff member, or patron. The idea is that the school can use a data-driven approach to determine what to do in response to such a threat rather than a knee-jerk reaction. There are three options in this policy - one in which a “threat assessment team” investigates and responds to threats; one in which the superintendent performs these tasks alone; and one in which a school district law enforcement unit conducts the investigation. You should select the option that best reflects your district’s practices. However, you cannot use the “law enforcement unit” option unless you have adopted Policy 5054, designating a “law enforcement unit” for your district.

Policy 3040. School Safety and Security. We have designed this policy so that it complies with the Safety and Security Protocols. The first section states that the board wants to meet the minimum safety requirements. If your board wants to go beyond the minimum to meet the “exceeds” or “outstanding” level of the rubric, please let us know and we will revise these policies accordingly.

In the next two sections of this policy, we have tried to separate out the obligations for safety and security measures between the superintendent, principals, and the crisis team. You may revise **who** must perform each of the duties identified, but you may not **eliminate** any of these duties and still comply with the Safety and Security Protocols.

Your board should carefully review the section of the policy dealing with memorials and select which option will best fit your district’s needs. We have made two changes to the policy. When a school community experiences the death of a student or a similar tragedy, there is often the very human tendency to want to do something in memory of the deceased student. These memorials can range from spontaneous tributes piled at lockers or parking spaces to more permanent, lasting tributes like placing plaques in halls or planting trees or gardens in the student’s name. There may also be ceremonies or assemblies that bring together members of the school community to share memories and grieve together. While this is a very understandable impulse, the most current psychological research indicates that these sorts of memorials are not good for kids and they create tremendous potential legal issues. The best legal and psychological agrees that it is best practice to disallow student memorials. While we defer to the research, we also know that there can be tremendous political pressure to allow a memorial. So, we

have included two options for memorials. The first is to flatly prohibit them. The second option sets up a process whereby the school's crisis team can consider a request for a memorial and make a recommendation to the board. It is important that you discuss this issue as a board **now** before a crisis event has occurred.

Policy 3041. Crisis Team Duties. This policy places the majority of the responsibility for complying with the Safety and Security Protocols on the crisis team. Note that the superintendent names people to serve on the crisis team using the considerations set out in policy 3040 above. The way this is set up, it will be the crisis team that conducts the self-assessment required by NDE. All of you currently have an All-Hazard School Security Plan. It is likely that the Safety and Security Protocols will require substantial revisions to that plan, and this policy places the responsibility for those revisions on the crisis team. Again, we have not included anything in this policy which is not required for minimum compliance with the Safety and Security Protocols.

Policy 3042. Construction Management at Risk Contracts and Policy 3043. Design-Build Contracts. The Political Subdivisions Construction Alternatives Act requires a school to have policies in place before it can use the construction management at risk and design-build methods of construction. These policies comply with the requirements of the Act.

Policy 3044. Incidental or De Minimis Use of Public Resources. The general rule is that personal uses of "public resources" are not permitted. However, the Nebraska Political Accountability and Disclosure Act allows boards or public entities, such as schools and ESUs, to pass a policy which authorizes board members and employees to use public resources for personal purposes when those uses are "incidental or de minimis." As long as the personal use is accounted for on the board member's or employee's personal taxes, as required by law, the board can authorize these uses to avoid complaints and allegations of misuse. This policy is designed to account for the most common uses we come across, and your board is free to remove or add additional uses consistent with your practices.

Policy 3045. Use of Sniffer Dogs. Many schools have decided to use trained drug dogs to conduct "sniff searches" of vehicles on school grounds, school lockers used by students, and other items or areas at the school. Schools have the authority to use drug dogs to conduct "sniff searches" in many, if not most, circumstances. One exception is the use of a dog to sniff a student or staff member. **We strongly discourage school districts from allowing dogs to sniff people.** The tougher questions are whether the school ***should*** implement use drug sniffing dogs and, if so, how

the program should be implemented. This policy includes our recommended procedures in the event that school decides to use drug dogs.

Policy 3046. Animals at School. This policy addresses animals on school grounds from all relevant legal perspectives: class pets, therapy animals, and service dogs. The requirements for each are different, with the key being the disability-related considerations for therapy animals (which can include nearly any animal) to service dogs (which include only specially trained dogs and miniature horses). The policy also requires that requests for service animals and requests for therapy animals (where you allow them) that are made by or on behalf of a student with an IEP or a 504 plan be referred to the respective IEP or 504 Team for consideration. There are two options for therapy animals, and you will need to pick one.

Policy 3047. Data Breach Response. School districts that are required to provide reasonable security to personal information handled by the district. This policy states the district will implement the appropriate security, and if the district experiences a data breach it will investigate the breach, provide notice to those affected, and notice to the Attorney General. We have also included a section that provides for data governance protocols to be put in place to map the flow of data between software, hardware, and personnel in order to maintain good data hygiene and make sure data breach responses will run smoothly and efficiently.

Policy 3048. Communicable Diseases. This policy sets forth steps to take if it is determined that a staff member or student has a high risk communicable disease. Because we get this question all the time, we did want to highlight that, yes, Hepatitis "E" is a real thing included in the DHHS regulations.

Policy 3049. Drones and Unmanned Aircraft. With the increasing use of drones and other unmanned aircraft by schools and by private individuals, this policy contemplates some general use restrictions while also factoring in differences for district uses versus personal or private use on school grounds. The policy generally defers to the superintendent or his or her designee to provide permission, designate authorized areas, and impose other restrictions on the use of drones on school property.

Policy 3050. Technology in the Classroom. This policy addresses the use of electronic devices and software applications in the classroom that are not selected or purchased by the district. If a teacher brings in a Google Home, Amazon Echo, or similar device; or wants to use a specific application; this policy requires that the teacher notify the administration of the device or application's use, and provides guidance on how the device should be setup.

The policy also restricts the use of assistive technology to prohibit the recording and transmitting of the classroom activities of other students.

Policy 3051. Opioid Overdose Prevention and Response. Naloxone, also known by its brand name Narcan, has been used by emergency responders and health care professionals for many years as an opioid antagonist to reduce deaths and negative consequences of individuals experiencing opioid overdose. Although Nebraska has a naloxone statute allowing for dispensing naloxone without a prescription, the Department of Health and Human Services, Division of Public Health, has also issued a standing order to facilitate the availability of naloxone. This policy allows the district to take advantage of those laws and have naloxone available to administer by appropriately trained staff. Much like the policy on AED's, it is permissive and you should consult with your school nurse and local authorities if you want to have a naloxone program.

Policy 3052. Leasing Personal Property. This policy provides the authority for authorized personnel to lease personal property (e.g., equipment, goods, etc.) from vendors for school district use. A decision will need to be made as to the total lease amount above which written quotes/estimates will be required to be obtained from multiple vendors.

This policy also provides the authority for the Superintendent to lease out district-owned personal property that is not needed for school purposes. Decisions will have to be made concerning (1) the threshold (dollar amount) of the fair market value of the personal property in question under which the Superintendent may lease out such property without board authorization, and (2) the maximum number of days that the Superintendent can agree to lease out district-owned personal property.

Policy 3053. Nondiscrimination. This policy satisfies the requirement that a school district have a policy which forbids discrimination for unlawful reasons.

School districts with 50 or more employees are required to appoint a responsible person to coordinate the administrative requirements of ADA compliance and to respond to complaints filed by the public. In this policy, the 504 coordinator is the same person as the ADA coordinator. If you do not want your 504 coordinator to serve as your ADA coordinator let us know and we can work with you to customize this policy.

Policy 3054. Law Enforcement Unit. This policy allows the board to designate a law enforcement unit for the district. The district is permitted to designate any individual or group as it's law enforcement unit. The disclosure

of records created and maintained by a law enforcement unit for a law enforcement purpose is not restricted by state and federal student record laws, so this policy further outlines how law enforcement unit records should be maintained and how they may be disclosed. Designating a law enforcement unit implicates complex legal and privacy considerations, and we encourage you to reach out for advice on these issues before adopting this policy.

Policy 3055. School Resource Officers. On and after January 1, 2021, school must have a memorandum of understanding in effect with any law enforcement agency that provides school resource officers and any security agency which provides security guards to schools in a school district. Each MOU must include policies that address six specific issues. We have developed this policy to ensure that every policy provision required by the new SRO statutes exists and can be incorporated into any MOU.

Policy 3056. Guest Speakers. Some schools have invited guest speakers into school with little to no knowledge of the guest speaker's message, experience, or intent. Not surprisingly, not all guest speaker appearances went as smoothly as one would hope when there is little research done about the guest speaker. This policy includes a process and procedure to research guest speakers so that everyone involved has a clear understanding of the guest speaker's purpose and message. This will help the school determine if the proposed message complies with school district policies and its fundamental values and to avoid unwanted surprises for everyone involved.

Policy 3057. Title IX. This policy went into effect on August 14, 2020.

3001 Budget and Property Tax Request

The board of education shall adopt a budget each year to support the school district's programs and services for the ensuing fiscal year. The superintendent of schools shall be responsible for developing the budget subject to the direction and decisions of the board. The budget document shall be under continuous development, based upon the requirements of the adopted educational program.

BUDGET PROCEDURES

Proposed Budget. The superintendent shall prepare the proposed budget in accordance with board policies and goals, state statutes, and regulations. As the district's spending plan, the budget will be based on up-to-date revenue estimates, and will reflect the assessed needs and programs approved by the board.

Budget Hearing Notice. Notice of place and time of the hearing, together with a summary of the proposed budget statement, must be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the school district. The four calendar days shall include the day of publication but not the day of hearing. The notice shall include the following statement:

For more information on statewide receipts and expenditures, and to compare cost per pupil and performance to other school districts, go to: <https://nep.education.ne.gov>

In addition, the district must electronically publish this statement on the school district web site. Such electronic publication must be prominently displayed with an active link to the Internet address for the web site established by the Nebraska Budget Act to allow the public access to the information.

Budget Hearing. The board must conduct a hearing prior to adopting the budget. The hearing must be held separately from any regularly scheduled meeting and may not be limited by time. The board must make a presentation outlining key provisions of the proposed budget statement, including, but not limited to, a comparison with the prior year's budget. Any member of the public desiring to speak on the proposed budget statement shall be allowed to address the board at the hearing and must be given a reasonable amount of time to do so. Five minutes shall generally be considered a reasonable amount of time.

Budget Hearing Documents. The board must make at least three copies of the proposed budget statement and at least one copy of all other reproducible written material to be discussed at the hearing available to the public at the hearing.

Budget Adoption. After the budget hearing, the proposed budget statement shall be adopted or amended and adopted as amended. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of the changes (including the items changed and the reasons for such changes) must be published in a newspaper of general circulation within the school district within twenty calendar days after its adoption without further hearing.

Certification and Filing. The amount to be received from personal and real property taxation shall be certified to the appropriate levying board as provided by law. The budget shall also be filed with the state auditor.

Purchase Authorization. Except for bids required under the section "Bid Letting and Contracts," the board's adoption of the budget shall authorize the purchases without further board action.

Monthly Report. At each monthly board meeting, the superintendent will provide a report on the current status of the major sections of the budget.

PROPERTY TAX REQUEST PROCEDURES – PROPERTY TAX REQUEST IS EQUAL TO OR LOWER THAN THE ALLOWABLE GROWTH PERCENTAGE

Property Tax Request Hearing. The board must hold a special public hearing called for the purpose of passing a property tax request resolution.

Property Tax Request Hearing Notice. The district must publish a hearing notice in a newspaper of general circulation in the school district at least four calendar days prior to the hearing. The four calendar days shall include the day of publication but not the day of hearing. The hearing notice must contain the following information: The certified taxable valuation under section 13-509 for the prior year, the certified taxable valuation under section 13-509 for the current year, and the percentage increase or decrease in such valuations from the prior year to the current year; the dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request; the property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation; the proposed dollar amount of the tax request for the current year and the property tax rate that will be necessary to fund that tax request; the percentage increase or decrease in

the property tax rate from the prior year to the current year; and the percentage increase or decrease in the total operating budget from the prior year to the current year.

Increase in Total Property Taxes Levied. If the annual assessment of property would result in an increase in the total property taxes levied as determined using the previous year's rate of levy, the district's property tax request for the current year shall be no more than its property tax request in the prior year, and the district's rate of levy for the current year shall be decreased accordingly when such rate is set by the county board of equalization.

Decrease or No Change in Total Property Taxes Levied. If the annual assessment of property would result in no change or a decrease in the total property taxes levied as determined using the previous year's rate of levy, the district's property tax request for the current year shall be no more than its property tax request in the prior year, and the district's rate of levy for the current year shall be adjusted accordingly when such rate is set by the county board of equalization.

Resolution. The board shall pass a resolution to set the amount of its property tax request only after holding the public hearing. The resolution setting the district's property tax request at an amount that exceeds the prior year's property tax request shall include, but not be limited to, the information required by section 77-1601.02(4).

Certification. The resolution setting the property tax request shall be certified and forwarded to the county clerk on or before October 15th of the year for which the tax request is to apply.

**PROPERTY TAX REQUEST PROCEDURES – PROPERTY TAX REQUEST IS GREATER
THAN THE ALLOWABLE GROWTH PERCENTAGE**

Property Tax Request Hearing. The board must hold a public hearing called for the purpose of passing a property tax request resolution. If another political subdivision within the county also seeks to exceed the allowable growth percentage, the hearing will be a joint hearing. In the event of a joint hearing, each political subdivision must designate one representative to attend the joint public hearing on behalf of the political subdivision. If a political subdivision includes area in more than one county, the political subdivision shall be deemed to be within the county in which the political subdivision's principal headquarters are located. The hearing agenda will only include discussion on each political subdivision's intent to increase its property tax request by more than the allowable growth percentage.

The hearing must be held after 6 p.m. on or after September 17th and before September 28th and before the district files its adopted budget statement. Any member of the public must be allowed a reasonable amount of time to speak at the hearing.

At the joint public hearing, the representative of each political subdivision must give a brief presentation on the political subdivision's intent to increase its property tax request by more than the allowable growth percentage and the effect of such request on the political subdivision's budget. The presentation must include, at a minimum, all information and statements required by law.

Property Tax Request Hearing Notice. Notice of the joint public hearing must be provided by:

- The County Assessor sending a postcard with all required information to all affected property taxpayers. The postcard shall be sent to the name and address to which the property tax statement is mailed;
- Posting notice of the hearing with all required information on the home page of the relevant county's web site, except that this requirement shall only apply if the county has a population of more than twenty-five thousand inhabitants; ***and***
- Publishing notice of the hearing with all required information in a legal newspaper in or of general circulation in the relevant county.

Provide Information to County Clerk. Each political subdivision that participates in the joint public hearing shall provide the following information to the county clerk by September 5th: the date, time, and location for the joint public hearing; a listing of and telephone number for each political subdivision that will be participating in the joint public hearing; and the amount of each participating political subdivision's property tax request.

Resolution. The board shall pass a resolution to set the amount of its property tax request only after holding the public hearing. The resolution setting the district's property tax request at an amount that exceeds the prior year's property tax request, including any increase in excess of the allowable growth percentage shall include, but not be limited to, the information required by law.

Certification. The resolution setting the property tax request shall be certified and forwarded to the county clerk on or before October 15th of the year for which the tax request is to apply.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

**3002
Deposits**

The board of education shall designate the depository or depositories for all school funds. All funds received by the district shall be deposited promptly in the proper account of each such depository. All funds shall be insured by the Federal Deposit Insurance Corporation or a surety bond approved by the board on securities of the United States government pledged by joint custody receipt.

Funds collected by district representatives shall be receipted, accounted for, and directed without delay to the proper depository.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3003

Bidding for Construction, Remodeling, Repair, or Site Improvement

I. Applicability of this policy.

Construction and contracts undertaken with federal funds, whether those funds are derived directly from the federal government (e.g. award of a federal grant) or are derived by pass-through awards from the Nebraska Department of Education (e.g. special education funds, school lunch funds, Title I funds) are subject to the policy on Construction with Federal Funds, which is found elsewhere in this section.

This policy applies to all other purchases and contracts made by the school district for construction, remodeling, repair and other site improvements.

II. Projects with an Estimated Cost of Less than \$109,000

- A. The school district will solicit quotes and/or estimates for all projects with an estimated cost of less than \$109,000.
- B. Prior to solicitation of the quotes and/or estimates, the superintendent will determine whether the district will accept oral submissions.
- C. Quotes and/or estimates may be solicited by the superintendent or his/her designee without board action.
- D. The terms of any construction project undertaken pursuant to this policy will be memorialized in a written contract which has been reviewed by the district's legal counsel and approved by the board.
- E. The district may use a Nebraska state-wide cooperative purchasing program in lieu of obtaining quotes or bids under this policy to the extent such a bid or quote is not otherwise independently required by law.
- F. Nothing in this subsection prohibits or requires the use of the formal bidding procedures. If the district is going to solicit formal bids for projects of less than \$109,000 they must follow the formal procedures outlined in this policy.

III. Formal Bidding for Major Purchases and Construction

- A. Pursuant to section 73-106 of the Nebraska statutes, the board will advertise for bids when the contemplated expenditure of the project

exceeds \$109,000 for the construction, remodeling or repair of a school-owned building or for site improvement.

- B. In projects that involve professional engineering or architecture, the board will have a registered professional engineer or architect prepare the plans, specifications, and estimates when the anticipated cost of the project exceeds \$118,000.

C. Advertising for Bids

1. The superintendent or designee will arrange to advertise for bids under this section by publishing notice in any newspaper of general circulation within the school district at least 7 calendar days prior to the date on which bids are due.
2. Nothing in this policy shall prevent the superintendent or designee from advertising in additional media outlets or for a longer period of time.

D. Bid Documents

1. The bid documents shall identify the day upon which the bids shall be returned, received or opened and shall identify the hour at which the bids will close or be received or opened.
2. The invitation for bids will be sufficiently certain and specific, will include any specifications and pertinent attachments, and will define the items or services in order to allow the bidder to properly respond.
3. The bid documents shall also provide that such bids shall be opened simultaneously in the presence of the bidders or their representatives.
4. Bids received after the date and time specified in the bid documents shall be returned to the bidder unopened.
5. If bids are being opened on more than one contract, the board, in its discretion, may award each contract as the bids are opened.
6. Sealed bids will be opened in a place and at the specific time

stated in the bid form. Bidders shall be notified of the opening and invited to be present.

7. The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid meets the bid specifications.

E. Any or all bids may be rejected if there is a sound documented reason

F. The terms of any construction project undertaken pursuant to this policy will be memorialized in a written contract which has been reviewed by the district's legal counsel and approved by the board.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3003.1
Bidding for Construction, Remodeling, Repair, or Related Projects
Financed with Federal Funds

I. Applicability of the Policy

This policy applies only to construction and contracts undertaken with federal funds which are subject to the federal Uniform Grant Guidance (UGG) and other applicable federal law, including but not limited to the Education Department and General Administration Regulations (EDGAR) and the United States Department of Agriculture (USDA) regulations governing school food service programs. In the event this policy conflicts or is otherwise inconsistent with mandatory provisions of the UGG, EDGAR or other applicable federal law, the mandatory provisions of the laws shall control.

The District will also comply with the requirements of the public lettings laws (NEB. REV. STAT. §§ 73-101 through 73-106) when the contemplated expenditure for the complete project exceeds \$109,000, the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. §§ 13-2901 through 13-2914), energy financing contracts (NEB. REV. STAT. §§ 66-1062 through 66-1066), other applicable state laws, and the board's general policy on Bidding for Construction and Related Projects. In the event of a conflict between state and federal law, the more stringent requirement shall apply.

II. All projects undertaken pursuant to this policy will be subject to the following bond requirements

- A.** A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B.** A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C.** A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons

supplying labor and material in the execution of the work provided for in the contract.

III. Construction Projects with an Anticipated Cost of Under \$250,000

A. Methods of Bidding/Soliciting Quotations or Estimates

The type of procedures required depends on the anticipated cost of the project.

1. Construction with an Anticipated Cost of up to \$10,000 (Micro-Purchases)

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed \$10,000. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent district staff determine that the cost of the purchase is reasonable. For purposes of this policy "reasonable" means the purchase is comparable to market prices for the geographic area.

To the extent practicable, the District distributes micro-purchases equitably among qualified suppliers. The District will follow its standard policy on purchasing.

2. Construction with an Anticipated Cost of between \$10,000 and \$250,000 (Small Purchase Procedures)

For construction projects subject to this policy, small purchases are purchases that, in the aggregate amount, is more than \$10,000 and less than \$250,000 annually. For small purchases, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources as detailed in the district's standard policies on purchasing and on bid letting and contracts.

B. Construction Projects with an estimated cost of between \$109,000 and \$249,999 will be made pursuant to the District's Policy on Bid Letting and Contracts.

Pursuant to Nebraska law, construction projects which have an

anticipated aggregate cost of \$109,000 or more are subject to state public lettings laws (NEB. REV. STAT. §§ 73-101 through 73-106). The board will follow its standard policy on bid letting and contracts for construction projects financed with federal funds which have an anticipated aggregate cost of between \$109,000 and \$250,000.

IV. Construction Projects with an Anticipated Cost Over \$250,000

A. Sealed Bids: All constructions projects subject to this policy with an anticipated cost of \$250,000 or more will be publicly solicited using the sealed bid method

1. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publicly advertised;
2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
3. Sealed bids will be publicly opened in a place and at the specific time stated in the bid solicitation. Bidders shall be notified of the opening and invited to be present.
4. The contract will be awarded to the lowest responsive and responsible bidder.
 - a) Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
 - b) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
 - c) Any or all bids may be rejected if there is a sound documented reason.
5. The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid meets the bid specifications. This means that the board will select the bid that offers the best value and award a contract based upon the amount of the bid and the bidder's ability and capacity to carry on

the work, its equipment and facilities, honesty, integrity, skills, business judgment, experience, equipment, facilities, financial stability, past performance, and other relevant factors.

6. The board will generally complete its review of bids and select a vendor within 30 days of bid submission.

B. Advertising for Bids.

1. The superintendent or designee will arrange to advertise for bids by publishing notice in any newspaper of general circulation within the school district at least 7 calendar days prior to the date on which bids are due.

2. Nothing shall prevent the superintendent or designee from advertising in additional media outlets or for a longer period of time.

C. Bid Documents

1. The bid documents shall identify the day upon which the bids shall be returned, received, or opened and shall identify the hour at which the bids will close or be received or opened.

2. The bid documents shall also provide that such bids shall be opened simultaneously in the presence of the bidders or their representatives.

3. Bids received after the date and time specified in the bid documents shall be returned to the bidder unopened.

4. If bids are being opened on more than one contract, the board, in its discretion, may award each contract as the bids are opened.

5. Sealed bids will be opened in a place and at the specific time stated in the bid solicitation. Bidders shall be notified of the opening and invited to be present.

6. Bids will be reviewed by the Superintendent and/or designee and submitted to the board for approval.

7. The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the

lowest, responsible, and responsive bidder whose bid meets the bid specifications. This means that the board will select the bid that offers the best value and award a contract based upon the amount of the bid and the bidder's ability and capacity to carry on the work, its equipment and facilities, honesty, integrity, skills, business judgment, experience, equipment, facilities, financial stability, past performance, and other relevant factors.

8. The board will generally complete its review of bids and select a vendor within 30 days of bid submission.

D. The terms of any construction project undertaken pursuant to this policy will be memorialized in a written contract which has been reviewed by the district's legal counsel and approved by the board.

V. Other Contract Matters.

A. Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

B. Contracting with Certain Vendors

Pursuant to the standards contained in 2 C.F.R. § 200.321, the District will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible and consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in the U.S. or processed in the U.S. substantially using agricultural commodities produced in the U.S.

C. Full and Open Competition

The district's procurement transactions will be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319.

D. Debarment and Suspension

The District awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed

procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The District may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the District verifies that the vendor with whom the District intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

The District will verify debarment or suspension by revising the excluded parties list on SAM.gov, collecting a certification through the bidding process, and/or by including a debarment and suspension provision in the bid and contract documents. The Superintendent or his/her designee shall be responsible for such verification.

E. Settlements of Issues Arising Out of Contract

The District alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

F. Record Keeping

1. Record Retention

- a) The District maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. The District also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

- b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Schedule 10 (Local School Districts) and Schedule 24 (Local Agencies General Records) of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the District to maintain records regarding construction projects for a minimum of five (5) years after the sale or demolition of the building. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.
 - c) Records will be destroyed in compliance with Schedule 10, Schedule 24, and State law. This includes the completion of a Records Disposition Report.
2. Maintenance of Construction Records for Projects Financed with Federal Funds
- a) The District must maintain records sufficient to detail the history of all construction projects financed with federal funds. These records will include, but are not necessarily limited to the following: rationale for the method of construction, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.
 - b) Retention of construction records shall be in accordance with applicable law and Board policy.

VI. Conflict of Interest and Code of Conduct

- A.** Board and staff member conflicts of interest are governed by the district's conflict of interest policies.
- B.** Contracts covered by this policy are subject to the following additional provisions.
 1. Employees, officers, and agents engaged in the selection, award, and/or administration of district contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.
 2. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
 3. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

C. Favors and Gifts

The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, with the limited exception of unsolicited items of nominal value.

D. Enforcement

Disciplinary Actions will be applied for violations of such standards by officers, employees, or agents of the District at the board's discretion.

VII. Financial Management

A. Identification.

The District will identify, in its accounts, all federal awards received and expended and the federal programs under which they were received. Federal program and award identification include, as applicable, the CFDA title and

number, federal award identification number and year, name of the federal agency, and, if applicable, name of the pass-through entity.

B. Financial Reporting

The District will make an accurate, current, and complete disclosure of the financial results of each federal award or program in accordance with the financial reporting requirements set forth in the Education Department General Administrative Regulations (EDGAR).

C. Accounting Records

The District maintains records which adequately identify the source and application of funds provided for federally-assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

D. Internal Controls

The Superintendent or his/her designee must maintain effective control and accountability for all funds, real and personal property, and other assets through board review and approval of claims, an annual audit of the district's finances pursuant to the applicable Nebraska Department of Education and federal rules and regulations, and comparison of expenditures and outlays to budgeted amounts. The District adequately safeguards all such property and assures that it is used solely for authorized purposes.

E. Budget Control

Actual expenditures or outlays will be compared with budgeted amounts for each federal award at least annually and more often as required by law or deemed prudent by the board or administrative staff.

F. Payment Methods

The District will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the District, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the District receives payment from the Nebraska Department of Education on a reimbursement basis. 2 CFR § 200.305. However, if the District receives an advance in federal grant funds, the District will remit interest earned on the advanced payment

quarterly to the federal agency. The District may retain interest amounts up to \$500 per year for administrative expenses. 2 CFR § 200.305(b)(9).

Consistent with state and federal requirements, the District will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for the Nebraska Department of Education to review upon request.

G. Allowability of Costs

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval.

When determining how the District will spend its grant funds, the Superintendent or his/her designee will review the proposed cost to determine whether it is an allowable use of federal grant funds before obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part. The Superintendent or his/her designee must consider these factors when making an allowability determination.

The Superintendent or his/her designee will consider Part 200's cost guidelines when federal grant funds are expended. The Superintendent or his/her designee will also consider whether all state - and District-level requirements and policies regarding expenditures have been followed.

VIII. Other Contract Matters.

A. Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

B. Contracting with Certain Vendors

Pursuant to the standards contained in 2 C.F.R. § 200.321, the District will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in US or processed in US substantially using agricultural commodities produced in US.

C. Record Keeping

1. Record Retention

a) The District maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and § 75.730-.731. The District also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Schedule 10 (Local School Districts) and Schedule 24 (Local Agencies General Records) of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the District to maintain records regarding federal awards for a minimum of six (6) years. Consequently, the District shall retain records for a minimum of six (6) years from the date on which the final Financial Status Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.

c) Records will be destroyed in compliance with Schedule 10, Schedule 24, and State law. This includes the completion of a Records Disposition Report.

2. Maintenance of Procurement Records

a) The District must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

b) Retention of procurement records shall be in accordance with applicable law and Board policy.

D. Privacy

The District has protections in place to ensure that the personal information of both students and employees is protected. These include the use of passwords that are changed on a regular basis; staff training on the requirements of the Family Educational Rights and Privacy Act (FERPA) and State confidentiality requirements; and training on identifying whether an individual requesting access to records has the right to the documentation.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3004
General Purchasing and Procurement

I. Applicability of this policy.

Purchases made with federal funds, whether those funds are derived directly from the federal government (e.g. award of a federal grant) or are derived by pass-through awards from the Nebraska Department of Education (e.g. special education funds, school lunch funds, Title I funds) are subject to the policy on Purchasing and Procurement with Federal Funds, which is found elsewhere in this section.

This policy applies to all other purchases made by the school district other than construction, remodeling, repair and site improvements.

II. General Purchasing Policy

- A. The school district's budget shall be the guide for all purchases. No employee of the district may make a purchase that is not provided for in the budget without board or administrative approval.
- B. The board intends to purchase competitively, whenever possible, without prejudice and to seek maximum educational value for every dollar expended.
- C. The acquisition of services, equipment and supplies shall be centralized in the administration office under the supervision of the superintendent of schools, who shall be responsible for developing and administering the purchasing program of the school district.
- D. Purchases or commitments of district funds that are not authorized by this policy will be the responsibility of the person making the commitment.

III. Building-Specific Purchasing

- A. School buildings are operationally under the control of building principals. Principals have control and responsibility for the building and grounds, for all supplies and equipment housed at the building, for all school-related activities in the building, and for all pupils, teachers, and other employees assigned to the building.
- B. Principals, in consultation with their staff, are responsible for requisitioning, managing, distributing, and utilizing supplies within the building.
- C. The superintendent of schools or his or her designee is responsible for the requisitioning, managing, distributing, and utilizing of supplies for maintenance and transportation.
- D. The administration is responsible for purchasing of goods, services and supplies and for providing the necessary forms for establishing efficient procedures to facilitate the process.

IV. **Purchasing Procedures**

- A. School personnel must secure the approval of an authorized administrator before making any purchases.
- B. Employees seeking reimbursement for a purchase made with their personal funds must attach an itemized receipt or invoice to all requests for reimbursement; must sign all purchase receipts or charge slips; and must submit itemized receipts and any purchasing card or credit card receipts to the office of the superintendent no later than the first of each month to be submitted for approval at the next regular board meeting. A non-itemized credit card receipt is not sufficient.
- C. Employees making purchases with a school district credit card or purchasing program must comply with the steps set forth in the district's Purchasing (Credit) Card Program.
- D. All purchases of goods and services made with district funds must be made on a properly executed purchase order.

- E. All purchases shall be initiated with a purchase order. Purchase orders are signed by the person responsible for that particular budget and finally by the superintendent.
- F. For purchases of more than \$10,000, authorized staff members must secure written quotes and/or estimates from a reasonable number of vendors. Staff will purchase from a responsible vendor with the lowest price unless the board approves the purchase from the more expensive vendor.

V. Relations with Vendors

- A. The board wishes to maintain good working relations with vendors who supply materials, supplies and services to the school system. The school shall not extend favoritism to any vendors. Each order shall be placed on the basis of quality, price and delivery, with past services being a factor if all other considerations are equal. The administrative team may, in its discretion, use a Nebraska a state-wide cooperative purchasing program in lieu of obtaining quotes or bids under this policy to the extent such a bid or quote is not otherwise independently required by law.
- B. No purchase shall be made that violates any conflict of interest policy or law.
- C. No employee shall endorse any product of any type or kind in such a manner as will identify him/her in any way as an employee of the school district.
- D. The board believes in patronizing local businesses. Consequently, when proposals are judged to be equal in terms of quality, price, and/or service, the contract or purchase will be awarded to the firm that is located within the district. However, the board will not sacrifice either quality or economy to patronize local businesses.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3004.1

Fiscal Management for Purchasing and Procurement Using Federal Funds

I. Applicability of Policy

This policy applies only to non-construction related purchases undertaken with federal funds which are subject to the federal Uniform Grant Guidance (UGG) and other applicable federal law, including but not limited to the Education Department and General Administration Regulations (EDGAR) and the United States Department of Agriculture (USDA) regulations governing school food service programs. In the event this policy conflicts or is otherwise inconsistent with mandatory provisions of the UGG, EDGAR or other applicable federal law, the mandatory provisions of the laws shall control.

All other non-construction purchases will be governed by the Board's general purchasing policy, which can be found earlier in this subsection. In the event of a conflict between state and federal law, the more stringent requirement shall apply.

This procurement policy shall govern all purchasing activities that relate to any aspect of the National School Lunch and Breakfast Programs. The district's goal is to fully implement all required procurement rules, regulations and policies set forth in 2 CFR 200, 7 CFR parts 210, 3016 and 3019, and by the Nebraska Department of Education.

II. Procurement System

The District maintains the following purchasing procedures.

A. Responsibility for Purchasing

The authority to make purchases shall be governed by the District's purchasing policy, which can be found elsewhere in this section. Except as otherwise provided in the District's purchasing policy, the acquisition of services, equipment, and supplies shall be centralized in the administration office under the supervision of the superintendent of schools, who shall be responsible for developing and administering the purchasing program of the school district. Purchases or commitments of district funds that are not authorized by this policy will be the responsibility of the person making the commitment.

B. Methods of Purchasing

The type of purchase procedures required depends on the cost of the item(s) being purchased.

1. Purchases up to \$10,000 (Micro-Purchases)

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed \$10,000. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent district staff determine that the cost of the purchase is reasonable. For purposes of this policy "reasonable" means the purchase is comparable to market prices for the geographic area.

To the extent practicable, the District distributes micro-purchases equitably among qualified suppliers. The District will follow its standard policy on purchasing, which can be found earlier in this subsection.

2. Purchases between \$10,000 and \$250,000 (Small Purchase Procedures)

Small purchases are purchases that, in the aggregate amount, is more than \$10,000 and less than \$250,000 annually. For small purchases, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources as detailed in the district's standard policies on purchasing and on bid letting and contracts, which can be found earlier in this subsection.

3. Purchases Over \$250,000

a) Sealed Bids (Formal Advertising)

For purchases over \$250,000, the district will generally follow the bidding process outlined in the board's policy on Bidding for Construction, Remodeling, Repair or Site Improvement.

b) Contract/Price Analysis

The District performs a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. The district will make an independent estimate of costs prior to receiving bids or proposals.

4. Noncompetitive Proposals (Sole Sourcing)

a) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from

only one source and may be used only when one or more of the following circumstances apply:

- 1) The item is available only from a single source;
 - 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 3) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
 - 4) After solicitation of a number of sources, competition is determined inadequate.
- b) Noncompetitive proposals may only be solicited with the approval of the superintendent or the board. Sufficient and appropriate documentation that justifies the sole sourcing decision must be maintained by the superintendent or designee.
- c) A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$250,000.

C. Use of Purchase (Debit & Credit) Cards

District use of purchase cards is subject to the policy on purchase cards which can be found elsewhere in this subsection.

D. Federal Procurement System Standards

The district's procurement transactions will be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319.

The District will maintain and follow general procurement standards consistent with 2 C.F.R. §200.318.

E. Debarment and Suspension

The District awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed

procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The District may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the District verifies that the vendor with whom the District intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

The District will verify debarment or suspension by revising the excluded parties list on SAM.gov, collecting a certification through the bidding process, and/or by including a debarment and suspension provision in the bid and contract documents. The Superintendent or his/her designee shall be responsible for such verification.

F. Settlements of Issues Arising Out of Procurements

The District alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

III. Conflict of Interest and Code of Conduct

A. Board and staff member conflicts of interest are governed by the district's conflict of interest policies.

B. Purchases covered by this policy are subject to the following additional provisions.

- 1.** Employees, officers, and agents engaged in the selection, award, and/or administration of district contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.
- 2.** Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or

other interest in or a tangible personal benefit from a firm considered for a contract.

3. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

C. Favors and Gifts

The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except that this provision does not prohibit the receipt of unsolicited items of nominal value. For purposes of this policy, "nominal value" means a fair market value of \$25 or less.

D. Enforcement

Disciplinary Actions including, but not limited to, counseling, oral reprimand, written reprimand, suspensions without pay, or termination of employment, will be applied for violations of such standards by officers, employees, or agents of the District.

IV. Property Management Systems

A. Property Classifications

1. Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the District for financial statement purposes, or \$5,000.
2. Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the District for financial statement purposes or \$5,000, regardless of the length of its useful life. 2 C.F.R. §200.94.
3. Computing Devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. 2 C.F.R. §200.20.

4. Capital Assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
 - b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). 2 C.F.R. §200.12.

B. Inventory Procedure

Newly purchased property shall be received and inspected by the staff member who ordered it to ensure that that it matches the purchase order, invoice, or contract and that it is in acceptable condition.

Equipment, Computing Devices, and Capital Assets must be tagged with an identification number, manufacturer, model, name of individual who tagged the item, and date tagged).

C. Inventory Records

For equipment, computing devices, and capital assets purchased with federal funds, the following information is maintained in the property management system:

1. Serial number;
2. District identification number;
3. Manufacturer;
4. Model;
5. Date tagged and individual who tagged it;
6. Source of funding for the property;
7. Who holds title;
8. Acquisition date and cost of the property;
9. Percentage of federal participation in the project costs for the federal award under which the property was acquired;
10. Location, use and condition of the property; and
11. Any ultimate disposition data including the date of disposal and sale price of the property.

The inventory list shall be adjusted by the superintendent of schools or his/her designee for property that is sold, lost, stolen, cannot be repaired, or that cannot be located.

D. Physical Inventory

- 1.** A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- 2.** The Superintendent or his/her designee will ensure that the physical inventory is performed. The physical inventory will generally occur during the months of June or July, but may be conducted during other time periods with the approval of the superintendent.

E. Maintenance

In accordance with 2 C.F.R. 313(d)(4), the District maintains adequate maintenance procedures to ensure that property is kept in good condition.

F. Lost or Stolen Items

The District maintains a control system that ensures adequate safeguards are in place to prevent loss, damage, or theft of the property.

G. Use of Equipment

Equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the federal award, and the District will not encumber the property for any non-federal program use without prior approval of the federal awarding agency and the pass-through entity.

H. Disposal of Equipment

When it is determined that original or replacement equipment acquired under a federal award is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Superintendent or his/her designee will contact the awarding agency (or pass-through for a state-administered grant) for disposition instructions.

If the item has a current FMV of \$5,000 or less, it may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.

V. Financial Management

A. Identification.

The District will identify, in its accounts, all federal awards received and expended and the federal programs under which they were received. Federal program and award identification include, as applicable, the CFDA title and number, federal award identification number and year, name of the federal agency, and, if applicable, name of the pass-through entity.

B. Financial Reporting

The District will make an accurate, current, and complete disclosure of the financial results of each federal award or program in accordance with the financial reporting requirements set forth in the Education Department General Administrative Regulations (EDGAR).

C. Accounting Records

The District maintains records which adequately identify the source and application of funds provided for federally-assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

D. Internal Controls

The Superintendent or his/her designee must maintain effective control and accountability for all funds, real and personal property, and other assets through board review and approval of claims, an annual audit of the district's finances pursuant to the applicable Nebraska Department of Education and federal rules and regulations, and comparison of expenditures and outlays to budgeted amounts. The District adequately safeguards all such property and assures that it is used solely for authorized purposes.

E. Budget Control

Actual expenditures or outlays will be compared with budgeted amounts for each federal award at least annually and more often as required by law or deemed prudent by the board or administrative staff.

F. Payment Methods

The District will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the District, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the District receives payment from the Nebraska Department of Education on a reimbursement basis. 2 CFR § 200.305. However, if the District receives an advance in federal grant funds, the District will remit interest earned on the advanced payment quarterly to the federal agency. The District may retain interest amounts up to \$500 per year for administrative expenses. 2 CFR § 200.305(b)(9).

Consistent with state and federal requirements, the District will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for the Nebraska Department of Education to review upon request.

G. Allowability of Costs

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval.

When determining how the District will spend its grant funds, the Superintendent or his/her designee will review the proposed cost to determine whether it is an allowable use of federal grant funds before obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part. The Superintendent or his/her designee must consider these factors when making an allowability determination.

The Superintendent or his/her designee will consider Part 200's cost guidelines when federal grant funds are expended. The Superintendent or his/her designee will also consider whether all state - and District-level requirements and policies regarding expenditures have been followed.

VI. Other Contract Matters.

A. Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.326 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

B. Contracting with Certain Vendors

Pursuant to the standards contained in 2 C.F.R. § 200.321, the District will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in US or processed in US substantially using agricultural commodities produced in US.

C. Record Keeping

1. Record Retention

- a) The District maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. The District also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.
- b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). Schedule 10 (Local School Districts) and Schedule 24 (Local Agencies General Records) of the Nebraska Records Management Division as approved by the Nebraska Secretary of State/State Records Administrator requires the District to maintain records

regarding federal awards for a minimum of six (6) years. Consequently, the District shall retain records for a minimum of six (6) years from the date on which the final Financial Status Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.

- c) Records will be destroyed in compliance with Schedule 10, Schedule 24, and State law. This includes the completion of a Records Disposition Report.

2. Maintenance of Procurement Records

- a) The District must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.
- b) Retention of procurement records shall be in accordance with applicable law and Board policy.

D. Privacy

The District has protections in place to ensure that the personal information of both students and employees is protected. These include the use of passwords that are changed on a regular basis; staff training on the requirements of the Family Educational Rights and Privacy Act (FERPA) and State confidentiality requirements; and training on identifying whether an individual requesting access to records has the right to the documentation.

Adopted on: July 11, 2022
Revised on: _____
Reviewed on: _____

3005
School Activities Fund

The superintendent of schools shall establish an activities fund account to be used to finance the operations of student organizations, inter-school athletics, and other school activities that are not a part of any other fund. The school activities fund is a school district account. All transactions related to the activities fund shall be conducted through an account at a board-approved depository.

The superintendent shall manage the activities fund and serve as its treasurer. The superintendent may divide the activities fund into more than one account to allocate portions of the fund for different purposes.

Funds in an activity's account after the activity ceases to exist shall be transferred to the general fund or such other fund as the board may choose. Funds left in a graduating class's account may be transferred into any other school account at any time after graduation upon board approval.

As school activities are a responsibility of the school district, any deficit in the activity fund shall be paid from the general fund.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3007
Review of Bills

The board of education members shall sign up and rotate each month to review the electronic copy of the bills that are to be presented to the board for payment. The board member shall report its recommendations to the board.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3008
Gifts, Grants and Bequests

The school district encourages those who wish to make gifts, grants, bequests or devises of property, real or personal, to the school district to make such donations through the district's foundation. The superintendent or his or her designee is authorized to accept on behalf of the school district gifts of personal property that are consistent with the district's mission and objectives and which the superintendent reasonably believes has a fair market value of \$_____ or less. In its sole discretion, the board of education may accept all other donations when they are consistent with the district's mission and objectives. Upon acceptance, donations shall become the sole property of the district. The donation will be under the complete control of the board or school district which will not have any obligation to replace it if it is destroyed or becomes obsolete.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

**3009
Audit**

The board of education shall appoint a certified public accountant or public accounting firm to audit all school accounts annually and report to the board of education. The audit shall include all areas required by law and the rules of the Nebraska Department of Education. The auditor is not obligated to follow generally accepted accounting principles (GAAP) but shall conduct the audit according to the standards of the auditing profession.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3010
Insurance

The board or education shall purchase such insurance as it deems appropriate to protect the district, the board as a corporate body, individual board members, appointed officers, employees, and volunteers from financial loss arising from any claim, demand, suit or judgment. The district may, but is not required to, solicit bids or quotes for insurance coverage.

The board shall review its insurance coverage before its expiration date, or as need dictates.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3011 Transportation

The school district will provide free transportation, partially provide free transportation, or pay an allowance for transportation in lieu of free transportation on each day school is in session to the students who reside in the district and qualify for transportation according to the district's transportation plan. The families of students who will not be provided transportation pursuant to the district's plan or who must drive students to a pick-up point will be reimbursed according to statute if they qualify for such reimbursement. Parents seeking mileage reimbursement must submit requests to the district on forms which may be obtained from the office of the Superintendent of Schools.

When a student who has been attending the district is placed into foster care, school district staff will collaborate with state and local child welfare agencies to determine whether transportation is required under state law when it is in the child's best interest that their school of origin be maintained. The district will only provide transportation to students placed in foster care when the responsible child welfare agency agrees to reimburse the school district for the cost of transportation or when transportation is otherwise required by law. The board designates the Superintendent of Schools as the initial point of contact for child welfare agency representatives to discuss transportation issues related to children in foster care.

Students who are homeless will be provided with transportation pursuant to Board Policy 5014.

The district will provide transportation to tuition students in accordance with the contract provisions, if any, for services from the contracting districts.

The use of buses for class parties, field trips, and similar purposes shall require the prior approval of the superintendent or appropriate principal.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3012

School Meal Program and Meal Charges

Meal Program. The school district will make a school meal program available to students. The cost of the program will be determined by the board of education so as to make the program as nearly self-supporting as possible. With board approval, the district may contract with a private company or corporation for the management and/or provision of the program.

The district will notify the families with children attending school of the current guidelines for free or reduced-price school meals. A copy of the complete regulations and procedures regarding reduced-price and free meals shall be available in the office of the superintendent.

Meal Charge Policy. The district will notify students and their families of the policy for **Charged Meals**, meaning meals received by a student when the student does not have money in hand or in his or her food account. This policy applies to students who receive meals at the free, reduced, or full rates.

Notice of this policy must be provided in writing to all households at the start of each school year and to households that transfer to the school during the school year. Notice may be provided through the student handbook, student registration materials, online portal used to access student accounts, direct mailing or e-mail, newsletter, the district website, and/or any other appropriate means. Notice of this policy will also be provided all school staff responsible for the enforcement of it, including food service professionals responsible for collecting payment for meals at the point of service, staff involved in notifying families of low or negative balances, and other staff involved in enforcing any aspect of this policy.

The district's policy on charged meals is: **[NOTE TO BE DELETED: THE BOARD SHOULD SELECT ONE OF THE FOLLOWING AND DELETE THE REST.]**

OPTION A

If a student has no funds available to pay for a meal, no food will be provided.

OPTION B

If a student has no funds available to pay for a meal, the student will be permitted to charge up to five meals. Thereafter, if a student has no funds available to pay for a meal, no food will be provided.

OPTION C

If a student has no funds available to pay for a meal, the student will be provided and charged for a limited "courtesy meal" option, such as a plain sandwich.

OPTION D

If a student has no funds available to pay for a meal, the student will be provided and charged for up to five limited "courtesy meals," such as a plain sandwich. Thereafter, if a student has no funds available to pay for a meal, no food will be provided.

Students who qualify for free meals will not be denied a reimbursable meal, even if they have accrued a negative balance from other food purchases. School staff may prohibit any students from charging a la carte or extra items if they do not have cash in hand or their account has a negative balance.

If a student repeatedly lacks funds to purchase a meal, has not brought a meal from home, and is not enrolled in a free meal program, the district will use its resources and contacts to protect the health and safety of the student. Failure or refusal of parents or guardians to provide meals for students may require mandatory reporting to child protection agencies as required by law.

Collection of Delinquent Meal Charge Debt

The school district is required to make reasonable efforts to collect unpaid meal charges. The building principal or his or her designee will contact households about unpaid meal charges and notify them again of the availability of the free and reduced meal program and/or establish payment plans and due dates by telephone, e-mail, or other written or oral communication. If these collection efforts are unsuccessful, the school district may pursue any other methods to collect delinquent debt as allowed by law. Collection efforts may continue into a new school year.

In the event that the Nebraska Department of Education develops a state-level meal charge policy, it shall supersede that portion of this policy.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3013
Emergency Closings

School shall be held on the dates set forth on the official calendar, and shall not be closed or dismissed except when superintendent or his or her designee determines that it is impossible or impracticable to hold school. When school is closed there will be no school-sponsored activities held without the permission of the superintendent or building administrator.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3014
Use of School Property

1. Use of Specific Facilities by Application and Agreement
 - a. The district permits non-commercial use of the following facilities by individual patrons for their personal health and wellness: weight room, track, and gym. The district understands that it would not be feasible to require a patron to apply to use facilities like the weight room on every occurrence. The facility uses defined in this paragraph are an exception to the general facility use requirements contained in this policy for ease of administration and efficiency. All other facility uses must comply with the other provisions of this policy.
 - b. These particular facilities may be used upon only one application and upon signing the district's written waiver and agreement.
 - c. Use of these facilities is governed by this and other district policy and the agreement signed by the user. A copy of each agreement will be maintained in the district's central office.

2. General Facilities Use Guidelines
 - a. School facilities may be used by various education and community organizations and individuals when it is in the interest of the general public.
 - b. School facilities may not be used for personal profit and other commercial purposes. The district opens its facilities to district patrons for the benefit of the public, not commercial uses. Due to the complications created by groups or individuals using district facilities for commercial purposes, these uses are prohibited. Booster clubs and other organizations raising money purely for the support of student groups, as defined below, and not for personal profit are not considered commercial uses but must comply with the district's policies which apply to these groups.
 - c. Any person or group using school facilities must assure that it will be responsible for maintaining order, protecting property, and providing security and safety.

- d. Only those organizations and persons who are known to school officials, who have financial resources sufficient to cover all rentals and possible damages, and who are willing to discharge such obligations shall be permitted to use the school facilities and equipment.
- e. The rental fees for school facilities shall be set by the board.
- f. Non-curricular student groups or non-student groups (as those terms are defined below) that wish to use the facility must submit a facility use application which may be obtained from the district's central office. The application must be received by the superintendent prior to the approval of any facility use.
- g. The shop and weight room may not be used by students when school is not in session, unless supervised by a district staff member or a responsible adult upon approval of the superintendent. Use of the shop and weight room in violation of this provision may lead to the students being denied access to these facilities or other consequences permitted by board policy and Nebraska law.
- h. Any person or group using the school facilities, for any purpose, must comply with all of the district's policies, rules, and regulations.

3. Definitions

- a. "Curriculum-related student groups" shall mean students participating in school-sponsored activities, supervised by district staff, related to the curriculum, and recognized by the board.
- b. "Extracurricular student groups" shall mean students participating in an extracurricular activity, sponsored by the district, supervised by district staff, and recognized by the board, such as athletic teams and academic teams which are not otherwise categorized as "curriculum-related student groups."
- c. "Non-curriculum related student groups" shall mean all other groups comprised primarily of students who attend the district participating in activities such as Boy Scouts, Girl Scouts, 4-H, political groups, religious groups, and other similar youth groups.

- d. "Non-student group" shall mean all other groups or individuals who apply to use district facilities.
- e. "Superintendent" shall mean the superintendent of schools or his/her designee.

4. Use of School Property by Student Groups

a. Curriculum-related and Extracurricular student groups

- i.) Curriculum-related and Extracurricular student groups may use school facilities at no cost to the group, if they restore the facilities to their prior state after using them.
- ii.) The district shall bear any costs associated with use by these groups (*e.g.*, the fee paid to a cook or a custodian required to be in attendance).
- iii.) Curriculum-related and Extracurricular student groups have priority over non-curriculum related student groups and non-student groups.

b. Non-curriculum related student groups

- i. Non-curriculum related student groups may use the school building during non-instructional time. Such use shall be without charge.
 - (1) Such uses shall occur while the building is normally open and there is a minimum of interference with custodians or other student and staff facility use.
 - (2) These groups may use the school buildings in the evening for meetings if the group is sponsored by an adult and the adult (1) files the application to use the facilities on behalf of the group and (2) assumes responsibility for cleanup and placing the area back in the condition it was in prior to use.
- ii. Non-curriculum related student groups must apply for use of the facilities and secure the superintendent's permission before using school facilities.

- iii. Non-curriculum related student groups may meet only on school premises at times and places determined by the superintendent.
- iv. Non-curriculum related student groups must meet each of the following conditions to secure the superintendent's permission to use school facilities:
 - (1) The facility use will occur during non-instructional time.
 - (2) The district has facilities available to accommodate the group.
 - (3) The use is voluntary and for the general benefit of the student participants.
 - (4) The use will not substantially interfere with the orderly conduct of educational activities and other programs within the school.

5. Use of facilities by non-student groups

- a. The superintendent may authorize the use of any school facilities for non-school activities by non-student groups.
- b. In addition to the guidelines listed elsewhere in this policy and other board policies or administrative protocol, the superintendent will consider the following when making determinations regarding use of district facilities by non-student groups:
 - i. The local education association may hold meetings when classes are not in session and staff members are not on duty.
 - ii. Non-student groups which provide education-related programming and services for students and staff may be given priority of use over other outside groups. The superintendent has sole discretion in determining whether proposed uses relate sufficiently to the district's educational standards and programs.

- iii. Non-student groups which provide programming and services for community members and others living within the district may be given priority of use over other outside groups.
 - c. Denial of access
 - i. The superintendent may limit or deny access to school buildings, grounds, and activities to any person whom the superintendent deems to be using the facilities inappropriately and contrary to the district's mission.
 - ii. Upon determining that a person or group has engaged in, or is engaging in conduct that constitutes grounds for exclusion under this policy, the superintendent shall take such action as he or she determines appropriate, including directing the person to cease engaging in the conduct or to leave the school premises or activity immediately. The superintendent may request assistance from law enforcement authorities to remove an offending person from the school grounds. A person who enters school premises in violation of these conditions shall be deemed to be trespassing.
 - iii. The superintendent shall have the authority to fix the time when, and the conditions under which, the offending person may return to school premises.
- 6. Students, staff, and community members may use or lease school equipment for non-school use only if they have received the prior permission of the superintendent.
- 7. Proof of Insurance
 - a. When any non-curriculum related or non-student group utilizes school district facilities, the group submitting the facility use application may be asked to provide proof of insurance up to the current tort claims limits applicable to political subdivision in the State of Nebraska. Currently, those limits are \$1,000,000 per person for any number of claims arising out of a single occurrence and \$5,000,000 for all claims arising out of a single occurrence.

- b. The district may require the non-curriculum related or non-student group to include the district as an additional insured on any such policies and may refuse access to its facilities until proof of satisfaction of this requirement is submitted to the superintendent.

8. No Fees for Admission

- a. Non-curriculum related and non-student groups may not charge a fee to participate in or be a spectator at any recreational activity, event, or other such gathering occurring on district grounds unless approved in advance by the superintendent.
- b. If the district retains control over the area of the premises in which the non-curricular and non-student group desires to use, meaning the district provides supervision, staffing, custodial services, or otherwise maintains its control during the group's use of the facilities, the group may not charge a fee for admission under any circumstances.
- c. Non-curricular and non-student groups may charge for parking or vehicle entry onto the premises unless otherwise prohibited by the superintendent.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3015
Time Away From School Activities

As it is important for students to have some nights free from school activities, school activities will not be scheduled on Wednesday nights or on Sundays without the approval of the superintendent.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

"Option A"

3016

Smoking

Smoking, including the possession or use of cigarettes, cigars, or other tobacco or tobacco derivative products; vapor products or electronic nicotine delivery systems; alternative nicotine products; or any other such look-alike or imitation product, is not permitted on school property at any time.

"Option B"

3016

Use of Tobacco Products

The use or possession of any tobacco product, including cigarettes, cigars, or other tobacco or tobacco derivative products; vapor products or electronic nicotine delivery systems; alternative nicotine products; or any other such look-alike or imitation product, is not permitted on school property at any time.

"Option C"

3016

Smoking

Smoking, including the use of cigarettes, cigars, or other tobacco or tobacco derivative products; vapor products or electronic nicotine delivery systems; alternative nicotine products; or any other such look-alike or imitation product, is permitted by non-students on school property only in specifically designated areas.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3017
Press Releases

Only individuals who have prior administrative approval may issue press releases regarding school-related activities and events. The superintendent may delegate responsibility for communicating with the media to building principals, the activities director, event sponsors, and other staff on an ad hoc basis.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3018
Denying Access to School Premises or Activities

The school district shall provide access to the district's buildings, grounds and activities to students, parents or guardians of students, and other persons who have legitimate reasons for being on school grounds. The superintendent of schools or his or her designee (referred to herein as the "administrator") may limit or deny access to school buildings, grounds, and activities to any person who:

1. Disrupts the educational environment;
2. Repeatedly fails or refuses to comply with the visitor protocol adopted by each building;
3. Is unreasonably boisterous;
4. Engages in violence, force, coercion, threats, intimidation, or similar conduct;
5. Causes or attempts to cause damage to school property or to the property of any student or school employee;
6. Causes or attempts to cause personal injury to any student, school employee or other person on school grounds or at a school activity on or off school grounds;
7. Uses vulgar, profane, or demeaning language; or
8. Uses fighting words;
9. Poses a danger to the safety and well being of students.

Upon determining that a person has engaged in, or is engaging in conduct that constitutes grounds for exclusion under this policy, the administrator shall take such action as he or she determines appropriate, including directing the person to cease engaging in the conduct or to leave the school premises or activity immediately. The administrator may request assistance from law enforcement authorities to remove an offending person from the school grounds.

The administrator shall have the authority to fix the time when, and the conditions under which, the offending person may return to school premises. A person who enters school premises in violation of these conditions shall be deemed to be trespassing. The administrator may summon law enforcement authorities to remove the person and request that criminal proceedings be initiated.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3019
Sale or Disposal of School Property

In selling school property, whether real or personal, the board of education shall be mindful of its financial obligation to the taxpayers of the school district. The board may sell school property in the manner it deems most appropriate for the particular property (e.g., by taking bids, by auction, or by selling the property for a specified price). The board shall take action at a regular meeting to approve the sale or disposal of property by the statutorily required two-thirds vote of the members before selling or disposing of it.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3020 Copyright Compliance

Restrictions on Use and Permission. Copyrighted works such as print, audio, video, software, applications, and other documents or media ("works") may be reproduced or used for educational purposes only when the use of the reproduction is a fair use in compliance with state and federal copyright law or when the written permission or license for such use has been obtained from the copyright holder. A staff member who wishes to use any non-original work must obtain the prior written permission of the building principal. Unless the district has obtained a license for use of a work for its intended educational purpose, no principal shall grant permission for a requested use of a copyrighted work unless the principal has reasonable grounds to believe that it is a fair use under applicable copyright law. Only works requested to be used in the course and scope of employment with the district will be permitted.

Distribution of Copyright Compliance Materials. The district will make information available to staff and students which describes and promotes compliance with copyright laws.

Course Materials Subject to Copyright Protection. The purpose of this provision is to provide notice to all staff, students, and parents that course materials may be subject to copyright protection. No class materials may be used or copied for use outside of the class session or sessions in which the materials are used for educational purposes unless authorized or required by law. No student or staff member may take audio or video recording of any class in which copyrighted materials are used unless authorized or required by law or an applicable educational plan provided under state and federal disability laws. Any such recordings will be kept only long as required to fulfill the purpose of the recording, such as for evaluative purposes, or the applicable retention period required by law.

Copies for Individuals with Disabilities. This policy does not restrict district staff members from reproducing or distributing copies of copyrighted works in a specialized format for use by individuals with disabilities to gain access to the work.

Removal of Unauthorized Copyrighted Works. Upon obtaining knowledge or awareness of an unauthorized use of copyrighted works, the district will take reasonable steps to remove, deny access to, and stop use of any unauthorized copyrighted work stored in the district's

paper or digital files or programs. This includes but is not limited to administrators accessing staff files and equipment for the purpose of physically removing curricular materials or directing staff members to cease using the materials immediately when there has been no license granted or fair use determination made. The superintendent or superintendent's designee may limit or deny access to district materials and programs to students or staff members who engage in violations of this policy or copyright law. The district may require the student or staff member to obtain training on copyright protections and limitations in order to regain access to any such materials or programs.

Violations by Students and Staff. Any staff member who violates this policy will face disciplinary action up to and including the cancellation, nonrenewal, or termination of the employee's employment. Any student who violates this policy may face disciplinary action up to and including expulsion. Individuals who subject the school district to financial penalty for copyright violations may be required to reimburse the district for its costs for such violation.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3021
Operation of School Business Office

The central office of the school district shall generally be open for business from 8:00 a.m. to 4:30 p.m. every weekday except for New Year's Day, Memorial Day, the Fourth of July, Labor Day, Good Friday, Thanksgiving, Black Friday, Christmas Eve, and Christmas Day. The Superintendent shall be responsible for ensuring that the central office is appropriately staffed when the district is open for business and shall be responsible for supervising all staff employed in the central office.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3022
Volunteers

Volunteers provide valuable assistance to school district staff and enrich the education program. Community members are encouraged to volunteer their services to the district under the conditions set forth below.

1. Volunteers must provide the district with directory information including their name, address, and telephone number.
2. Upon request by the district, volunteers must promptly execute a Volunteer Services Agreement.
3. The district may, but is not required to, conduct a criminal background check on any volunteer. A potential volunteer who refuses to undergo a background check will not be permitted to volunteer for the district.
4. Volunteers shall not perform the duties of a teacher as that term is defined in Nebraska statutes or regulations.
5. Volunteers do not have any property right in or to a volunteer assignment. The school district may deny or terminate a volunteer assignment for any reason that is not unconstitutional or unlawful. The superintendent's decision shall be final.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3023 Record Management and Retention

The school district will comply with all federal record retention requirements, the Nebraska Records Management Act, and with Schedules 10 and 24 of the Nebraska Secretary of State's Records Management Division. These requirements apply to both physical and digital records. When permitted by Schedule 10 and Schedule 24 of the Nebraska Secretary of State's Office, records will be transferred to durable electronic media for long-term storage.

Special Rules Related to Electronic Forms of Communication.

Electronically stored information such as e-mail, instant messaging, and other electronic communication are important to the district's overall operation. E-mail and other forms of electronic communication which is subject to retention under the Nebraska Records Management Act may be moved to a storage method other than their original format. Each individual who creates or receives electronic communications that belong to or pertain to the operation of the district is responsible for determining whether and in what format those records must be maintained. Duplicate records may be destroyed at any time prior to the approved retention period. Staff members who are uncertain about whether a record should be retained should consult with their supervising administrator.

Due to the nature and volume of forms of electronic communication related to the operation of the district, transitory or multiple copies of electronic communication will be retained with metadata intact for 30 days. After this time, the electronically stored information with metadata intact shall be subject to overwriting or deletion from the district's electronic files and records, except as otherwise required by these policies or state and federal law.

School-affiliated Social Media Posts. Communication on school-affiliated social media accounts are considered short-term communications pursuant to the Records Management Act. As such, they will be retained in their original form on the vendor's system and will not be deleted by the user for at least 6 months. Individuals who are uncertain as to whether a specific social media account is "school-affiliated" should refer to the Board's policy on Staff and District Social Media Use contained elsewhere in these policies.

Special Rules Related to Security Camera Footage. Video footage from security cameras is generally considered working papers under the Records Management Act, and will be overwritten consistent with the district's audio and video recording policy. Video footage which captures an event of

educational or behavioral significance and contains personally-identifiable information will be maintained by the school district pursuant to its policy on student records.

Student Records. The retention of student records is also governed by the board’s policy on student records.

Records Regarding Pending or Threatened Litigation. When litigation against the district or its employees is filed or threatened, the district will take all reasonable action to preserve all documents and records that pertain to the issue. When the district is made aware of pending or threatened litigation, a litigation hold directive will be issued by the superintendent or his/her designee. The directive will be given to all persons suspected of having records that may pertain to the potential issues in the litigation. The litigation hold directive overrides any records retention schedule that may otherwise call for the disposition or destruction of the records until the litigation hold has been lifted.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3024

Booster Clubs and Parent-Teacher Organizations

Parent-teacher organizations and booster clubs (collectively, "Supporting Entities") promote goodwill throughout the community and strengthen educational programs via parental and community involvement in the district. However, the district's involvement with Supporting Entities may result in negative legal and political consequences.

Supporting Entities are separate entities from the district and board. Therefore, district employees may only participate in a Supporting Entity's activities as a member, officer, or director of the Supporting Entity. District employees may not participate in Supporting Entities in their capacity as a district employee. Further, in-school announcements for Supporting Entity sponsored functions must provide a clear indication that the function is sponsored by the Supporting Entity.

Notwithstanding anything herein to the contrary, an administrator employed by the district may attend the meetings of the Supporting Entity. An administrator who attends Supporting Entity meetings must strongly **recommend** that the Supporting Entity adopt the following policies:

- (a) The Supporting Entity should legally establish itself as a Nebraska Nonprofit Organization.
- (b) The Supporting Entity should require that
 - i. all checks written out of the Supporting Entity's checking account contain two signatures;
 - ii. sales slips, receipts, or invoices for every expenditure be provided to the Supporting Entity's treasurer and kept in the Supporting Entity's records; and
 - iii. bank statements be reviewed and approved by the Supporting Entity treasurer and reconciled by a Supporting Entity officer that does not have check-signing authority.

Supporting Entities may only use the district's facilities for meetings or public activities, and may only use the district's names, logos, or mascots, upon prior written approval of a district administrator.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3025
Returned and Outstanding Checks

Returned Checks. Any individual or entity that writes a check to the school district which is returned due to insufficient funds must reimburse the school district in cash for the amount of the check plus a \$15.00 returned check charge. Individuals or entities whose checks are repeatedly returned due to insufficient funds may be prohibited from paying amounts due to the school district via check.

Outstanding Checks. The superintendent will review outstanding checks issued from the school district's accounts. Outstanding checks are those which have not been deposited by the payee within 180 days of issuance. The board authorizes the superintendent or his or her designee to resolve all matters related to outstanding checks, including stopping payment and reissuing checks.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3026 Handbooks

The school district’s handbooks for students and staff are intended to convey information and explain school regulations and procedures that are necessary for the school to run smoothly and efficiently. Although the board of education may take action to approve the handbooks annually, the administration has the authority to change the contents of any handbook so long as the changes are consistent with board policy.

None of the district’s handbooks creates a “contract” between the school district, staff members, parents or students.

If any information contained in any handbook conflicts with board policy or state statute, the policy or statute will govern.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3027

Resolution of Conflicts Between Parents Over School Issues

It is in students' best educational interests to have parents work cooperatively with each other and with school personnel regarding their children's education. In certain circumstances, parents disagree with each other regarding their children's education or other issues involved with the school district. Though such disagreements typically occur with separated or divorced parents, this regulation is not limited to those circumstances.

1) Obtaining Records and Conferring with Teachers.

All parents can obtain their children's records and meet with their children's teachers regardless of custody or visitation rights unless a court enters an order otherwise or their parental rights have been terminated. The district will not schedule separate parent-teacher conferences absent extraordinary circumstances.

2) Accessing a Child at School/Picking Up a Child.

School personnel will neither interpret nor enforce court orders governing the relations between separated or divorced parents unless the court order terminates the parental rights of a parent, limits a parent to supervised visitation with minor children or otherwise specifically limits the parent's access to the child at school. In all other circumstances, parents may contact their child while at school or pick a child up from school at any time. School staff are not responsible for enforcing visitation schedules contained in any court order to which the school district is not a party.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3028
Sex Offenders

The safety of the students attending school is very important to the board of education. School employees, parents, and students should be aware of dangers posed by sex offenders living within the school district, and should be vigilant in providing protection against these dangers.

The board does not generally permit registered sex offenders on school grounds, at any school sponsored activity, or on any property under the control of the school district. The superintendent or his/her designee is hereby empowered to notify sex offenders of this policy and to grant limited permission to attend certain activities on a case-by-case basis.

Students who are registered sex offenders shall not be precluded from receiving a free education from the school district on that basis. The school district will consider a student's status as a registered sex offender in determining the student's educational placement and program.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3029
Distribution of Flyers Advertising Non-School Organization
Activities

As students can derive social and educational benefits from activities sponsored by non-school organizations, groups or individuals, the district will distribute flyers advertising activities of non-school organizations that meet the requirements set forth below:

1. The flyer may not contain statements that are obscene, lewd, vulgar, profane; violate federal, state or local laws or regulations; violate board policy; advocate the use or advertise the availability of any substance or material that may reasonably be believed to constitute a direct and substantial danger to the health or welfare of students, such as tobacco, alcohol or illegal drugs; incite violence; advocate use of force or urge violation of federal, state or municipal law, district policy or regulations; interfere with or advocate interference with the rights of any individual or the orderly operation of the schools and their programs.
2. The non-school organization must contact the district office to (a) inform the district that it wishes to have flyers distributed to students and (b) obtain a date from the office on which the flyers will be delivered.
3. The non-school organization must provide a sufficient number of copies of the flyer and must deliver them to the district at least three days before the date the flyers are to be distributed.
4. The flyer may not advertise any activity which will take place during instructional time or during school-sponsored activities.
5. The flyer must include a statement explaining that the organization is not affiliated with or endorsed by the district.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3030 Automatic External Defibrillator (AED) Program

An automatic external defibrillator (AED) is a portable device used to induce electrical stimulation to the heart muscle in the event of a potential cardiac arrest. The school district has a limited number of AEDs in its facilities. The location of the AEDs will be determined by the AED Program Coordinator in consultation with members of the school district administration and the local fire/EMS department. The presence of AEDs in certain locations in selected district buildings does not imply that AEDs will generally be available in all locations or in all district buildings. Likewise, the district does not make any promise, express or implied, that a trained staff member will be available to operate the AED in the event of a potential cardiac arrest.

1. Equipment

Equipment shall be an automated external defibrillator in working condition that meets standards established by the Federal Food and Drug Administration and is in compliance with the manufacturer's maintenance schedule. Gifts, grants and donations, including in-kind donations, designated for obtaining an automated external defibrillator, or for inspection, maintenance or training in the use of an automated external defibrillator will be accepted and placed into a special district account to assist in obtaining and maintaining AEDs.

When the school acquires an AED it will notify the local emergency medical service of the existence, location, and type of the AED, and will notify EMS of any change in the location of such defibrillator. If an AED is located in a bus or other school vehicle, only the primary site where the vehicle or object is located will be reported to EMS.

2. Program Coordinator

a. The School District's AED Program Coordinator is the Superintendent of Schools.

b. The Program Coordinator shall:

- Consult with the school's administration and the medical advisor to develop a written protocol for the use of AEDs, and post such protocol near each AED
- Select employees for AED training

- Arrange for appropriate training of anticipated users at least annually
- Maintain a training schedule that includes the names of those trained and dates both of current training and dates for recertification.
- Check equipment according to the manufacturer's guidelines and take appropriate action in the event of any variance or need
- Maintain on file a specification sheet on each approved AED model
- Monitor the effectiveness of this system
- Communicate with medical director on issues related to medical emergency response program including post-event reviews
- Coordinate with the local fire department and police department
- Take appropriate steps after an AED event, including sharing of data with appropriate medical and EMS personnel, cleaning, replacing or recharging components of the AED as appropriate.

3. Medical Oversight

- a. The medical advisor of the AED program is Dr. Tracie Martin, MD.
- b. The medical advisor has ongoing responsibility for:

- Providing medical direction for use of AEDs
- Writing a prescription for AEDs
- Reviewing and approving guidelines for emergency procedures related to use of AEDs and cardio pulmonary resuscitation
- Evaluation of post-event review forms and digital files downloaded from the AED

4. Volunteer Responders

Anyone may, at their discretion, provide voluntary assistance to victims of medical emergencies. The extent to which these individuals respond shall be appropriate to their training and experience, and may include CPR, AED or medical first aid.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3031
Students Electing to Attend School in Adjoining State

The board shall deny applications of students seeking to attend school in an adjoining state. The board shall make an exceptions to this policy only upon a showing by the student’s family that (1) the student will suffer extreme and unusual harm if not allowed to attend school in an adjoining state; or (2) the district’s financial circumstances will be unaffected by the out-of-state transfer.

This policy shall not apply to out-of-state placements of students with verified disabilities by their Individualized Education Plan Teams.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3032

Copying Fees for School District Records

Requests for copies of school district records shall be subject to applicable copying fees. No fee shall be charged for providing a copy of a student or public record if a specific law or regulation requires the copy to be provided without charge.

Student Records. Students and their parents or guardians shall not be charged any fee to inspect and review the student's files or records. Students and their parents or guardians who desire a copy of the student's files or records shall pay the reasonable cost of reproduction as follows:

- Black and white letter or legal-sized photocopies or computer data printouts: 10 cents for each copy.
- Other medium: Actual cost of reproduction.
- Postage fees: Actual cost.

Students and their parents or guardians **shall not be charged any fee:**

- To search for or retrieve any student's files or records.
- For a copy of a student's Individualized Education Plan (IEP).
- For copy of the special education evaluation report and the documentation of determination of eligibility for special education services upon completion of the administration of assessments and other evaluation measures.
- If the fee effectively prevents the parents from exercising their right to inspect and review student records.

Student Records – Transfer School. A copy of the student's files or records, including academic material and any disciplinary material relating to any suspension or expulsion shall be provided at no charge, upon request, to any public or private school to which the student transfers.

Public Records. Individuals requesting copies of public records shall pay the actual added cost of making the copies available.

- For photocopies, actual added costs may include a reasonably apportioned cost of the supplies, such as paper, toner, other equipment used in preparing the copies, and any additional payment obligation for the time of contractors necessarily incurred to comply with the copy request.

- For printouts of computerized data on paper, actual added cost may include computer run time and the cost of materials for making the copy.
- For electronic data, the actual added cost may include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming, and production of a report in the form furnished to the requester.
- The actual added cost shall not include any charge for the existing salary or pay obligation to public officer or employees for the first four hours of searching, identifying, physically redacting, or copying records, but fees may be charged after the first four hours.
- The district shall not charge any fee for copies of public records that is prohibited by law but reserves the right to charge any other fee allowed by law.

The fee schedule for public records copies is as follows:

- Black and white letter or legal-sized photocopies or computer data printouts: 10 cents for each copy.
- Other medium: Actual cost of reproduction.
- Postage fees: Actual cost

Deposit. The school district may require a deposit before providing copies of student or public records if the estimated cost to fulfill the request exceeds fifty dollars.

Waiver. Documents may be furnished without charge or at a reduced charge where the district determines that waiver or reduction is in the public interest.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3033

Lending Textbooks to Children Enrolled in Private Schools

The school district shall make textbooks available to private school children who reside within the district or are otherwise entitled to borrow them pursuant to statute and 92 Nebraska Administrative Code, section 4. The district is obligated to purchase and lend textbooks only to the extent that the Legislature appropriates funds to the Nebraska Department of Education to be distributed for this purpose. As used in this policy, "textbooks" shall have the definition adopted by the Nebraska State Board of Education in Rule 4.

The district shall make a request for funds by filing an application on the form prescribed by the Department of Education no later than February 15th prior to the school year for which the application is made. The application shall include: the number of applications received; the number of textbooks requested; the number of textbooks needed to be purchased to fill the requests; the purchase price of the textbooks needed to be purchased which may include up to 5% of the cost to defray administrative expense; the title, purchase price, and number requested of each textbook including any shipping or handling charges; and if applicable the amount of carryover funds remaining from the previous year, amount of funds on hand from sale of unused textbooks, and amount of funds on hand from reimbursements for damaged textbook.

Textbooks which have not been requested for three consecutive years may be classified as unused and disposed of by sale or otherwise.

On or before November 15th, the district shall prepare a list of textbooks that are designated for use in the district during the current year and a list of new textbooks designated for use the following school year. The lists shall be kept current and in a place where they may be viewed during regular business hours. The district shall maintain a separate inventory of textbooks purchased for the use of private school children residing in the district.

Any parent or legal guardian who wishes to borrow textbooks shall submit an application on the form prescribed by the Department of Education to the district's administration offices on or before January 15th prior to the school year for which the application is made. The district shall maintain a supply of blank application forms and receipt forms. It shall keep the forms that have been signed by parents and guardians in a separate file for at least 5 years. It shall notify the parents and guardians at least 10 days prior to the start of school when and where the textbooks will be available. It shall make

textbooks available to parents or guardians on or before August 15th. If the number of textbooks for a particular subject or grade level is insufficient to fill all of the requests, the textbooks shall be distributed to parents and guardians based on a random drawing.

Parents and guardians shall sign a receipt on the form prescribed by the Department of Education when they pick up the textbooks and shall return the textbooks that can be returned no later than 15 days after the district's last day of class. The district shall assess the returned textbooks for damage beyond normal wear and tear. The parent or guardian who signed the receipt is responsible for paying the reasonable cost of the repair or replacement of any book that is damaged, lost, stolen, or not returned.

The school district shall limit the loan each year to ten textbooks per student for students in grades K-6 and to eight textbooks per student for students in grades 7-12.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3035

Chain of Command – District Administration

The superintendent shall be in control of all school district operations except as provided by another policy or as otherwise provided by law. Following is the administrative chain of command working from the lowest level on the chain upward.

Student Discipline:	1. Classroom Teacher 2. Principal 3. Superintendent
Instruction or Curriculum:	1. Teacher 2. Principal 3. Superintendent
Transportation:	1. Bus Driver 2. Principal 3. Superintendent
Facilities, Grounds, or Maintenance:	1. Custodial staff 2. Maintenance 3. Principal 4. Superintendent
Policy or Handbook:	1. Principal 2. Superintendent
Athletics:	1. Coach 2. Athletic/Activities Director 3. Principal 4. Superintendent
Personnel:	1. Employee in question 2. Principal 3. Superintendent
All Other Matters	1. Building Principal 2. Superintendent

Absent extraordinary circumstances, each matter must be addressed at whatever level the initial action occurred. If the matter is not resolved, the individual may raise it with the next person on the chain of command. This

policy does not supersede any individual's right to contact Board members directly. However, whenever a matter is brought directly to the Board as a whole or to a Board member as an individual, it will be referred to the appropriate individual in the chain of command for study and resolution. The most effective means of initial communication is a personal conference, e-mail, or telephone conversation. E-mail addresses and phone numbers can be found on the school district's website at:
<https://www.lyonsdecaturschools.org/>

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3036

Purchasing (Credit) Card Program

The board approves the use of a purchasing card (credit card) program for the purchase of goods and services for and on behalf of the school district. The board shall determine the type of purchasing card or cards to be used in the program and shall contract with a third-party provider as provided by law.

Authorized Purchases. Authorized users have standing authority to use the purchasing card to charge actual, necessary, and reasonable travel expenses. Otherwise, the purchasing card may only be used to purchase goods and services approved by the board or the superintendent or designee.

Unauthorized Purchases. In no event shall the purchasing card be used for personal purchases, purchases that are not school related, alcohol purchases, or purchases that are not allowed by law. Such unauthorized use shall result in discipline, up to and including the end of employment. Individuals who make unauthorized purchases shall reimburse the district for the expense within ten days of the purchase or the discovery of the unauthorized purchase, whichever occurs first.

Authorized Users. The board may take action at any meeting to authorize users or to revoke or suspend user privileges. Such action shall be recorded in the minutes. The school shall also maintain a purchasing card in the name of the school district. School district employees may purchase school related goods and services with the school district credit card only with authorization from the superintendent.

Documentation. Employees seeking reimbursement for a purchasing card purchase shall submit an itemized receipt ***and*** a purchasing card receipt to the school district. The itemized receipt shall include the name of the business, contact information, the date, a description of each item sufficient to give the board reasonable notice of the item purchased, and the price. ***A non-itemized credit card receipt alone is not sufficient.*** Designated school personnel shall maintain the documentation for at least 10 years or as otherwise required by Schedule 24 – Local Agencies (General Records) maintained by the Nebraska Records Management Division. Employees shall maintain copies of any documentation submitted to the school district.

Suspension or Termination of Privileges. The board or the superintendent (or his or her designee) (1) ***shall*** temporarily or permanently suspend the purchasing card privileges of any individual that does not submit an itemized receipt for each purchasing card purchase, and (2) ***may*** temporarily or permanently suspend the purchasing card privileges of any individual for any other reason. The individual's purchasing card account shall be immediately

closed and he or she shall return the purchasing card to the superintendent or board. Purchases that are not accompanied by the required documentation shall be considered unauthorized, and the individual making the purchase shall reimburse the district within 10 days of the purchase or the discovery of the non-itemized purchase, whichever occurs first.

Reward Points or Rebates. Any reward points, rebates, or other benefits received from the third-party purchasing card company are and shall remain the property of the school district.

Purchase Review Procedures. The superintendent, or his or her designee, and business manager shall conduct independent reviews of credit card expenses, or a sample thereof, on a monthly basis. Any unlawful or unauthorized expenditure or other discrepancy shall be brought to the attention of the offending employee, if any, and the board. The superintendent or his or her designee shall provide the board at each regular meeting with the documentation submitted pursuant to this policy or a summary of that documentation with a description of each item sufficient to give the board reasonable notice of the items purchased. Any unlawful or unauthorized purchase shall be addressed as provided in this policy or as otherwise allowed by law.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3037 Petty Cash

The district office each shall have a petty cash fund for the purchase of materials, supplies, services, or other school related goods and services in circumstances requiring immediate payment.

Fund Custodians. The amount of each fund will not exceed \$6,000. The individuals holding the following employment positions shall be the custodians of each petty cash fund and shall administer and be responsible for them:

District Office: Business Manager and Superintendent

Petty fund disbursements may only be made with the authorization of the petty cash fund custodian or the superintendent.

Documentation. All petty cash fund disbursements are to be supported by an itemized receipt or other sufficient evidence that documents the expenditure. The itemized receipt or supporting documentation shall include the name of the business, contact information, the date, a description of each item sufficient to give the board reasonable notice of the item purchased, and the price. Designated school personnel shall maintain the documentation for at least 10 years or as otherwise required by Schedule 24 – Local Agencies (General Records) maintained by the Nebraska Records Management Division. Employees shall maintain copies of any documentation submitted to the school district. Expenses will be assigned to the proper budget account.

Unauthorized Purchases. In no event shall the petty cash fund be used for personal purchases, purchases that are not school related, alcohol purchases, or purchases that are not allowed by law. Such unauthorized use shall result in discipline, up to and including the end of employment. Individuals who make unauthorized purchases shall reimburse the district for the expense within ten days of the purchase or the discovery of the unauthorized purchase, whichever occurs first.

Purchase Review Procedures. The superintendent, or his or her designee, and the school district treasurer shall conduct independent reviews of petty cash fund expenditures on a monthly basis. Any unlawful or unauthorized expenditure or other discrepancy shall be brought to the attention of the offending employee, if any, and the board. The superintendent or his or her designee shall provide the board at each regular meeting with petty cash fund documentation that includes a description of each item sufficient to give the board reasonable notice of the items purchased. Any unlawful or unauthorized

purchase shall be addressed as provided by board policy or as otherwise allowed by law.

Reconciliation and Closeout. Each petty cash fund will be reconciled by the school district treasurer and closed out at the end of the fiscal year (August 31st). The petty cash fund will be reestablished by the board of education at its September meeting or at such other meeting as determined by the board, if needed.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3039

Threat Assessment and Response

The board of education is committed to providing a safe environment for members of the school community. Students, staff and patrons are urged to immediately report any statements or behavior that makes the observer fearful or uncomfortable about the safety of the school environment.

1. Definitions

- a. A **threat** is an expression of willful intent to physically or sexually harm someone or to damage property in a way that indicates that an individual poses a danger to the safety of school staff, students or other members of the school community.
 - i. The threat may be expressed/communicated behaviorally, orally, visually, in writing, electronically, or through any other means.
 - ii. A **transient threat** is an expression of anger or frustration that can be quickly or easily resolved.
 - iii. A **substantive threat** is an expression of serious intent to harm others which includes, but is not limited to, any threat which involves a detailed plan and means
- b. A **threat assessment** is a fact-based process emphasizing an appraisal of observed (or reasonably-observable) behaviors to identify potentially dangerous or violent situations, to assess them and to manage/address them. Threat assessment is the process of distinguishing “transient” threats from serious ones in a systematic, data-informed way.
 - i. The threat assessment process is distinct from student disciplinary procedures. The mere fact that the district is conducting a threat assessment does not by itself necessitate suspension, expulsion or emergency exclusion without complying with state law and board policy related governing those actions.

- ii. The threat assessment process is distinct from specialized instruction which a student with a disability may receive from the school district. The school district will not change a student's educational placement as that term is used in the Individuals with Disabilities in Education Act *solely* as part of a threat assessment.

2. Obligation to Report Threatening Statements or Behaviors.

All staff and students must report **substantive threats** to a member of the administration immediately and comply with any other mandatory reporting obligations. Staff and students who are unsure whether a threat is substantive or transient should report the situation. Staff and students must make such report regardless of the nature of the relationship between the individual who initiated the threat or threatening behavior and the person(s) who were threatened or who were the focus of the threatening behavior. Staff and students must also make such reports regardless of where or when the threat was made or the threatening behavior occurred.

THREATS OR ASSAULTS WHICH REQUIRE IMMEDIATE INTERVENTION SHOULD BE REPORTED TO THE POLICE AT 911.

3. Threat Assessment Investigation and Response

When a threat is reported, the school administrator shall initiate an initial inquiry/triage and make a determination of the seriousness of the threat as expeditiously as possible. The school administrator must contact law enforcement if the administrator believes that an individual poses a clear and immediate threat of serious violence.

If there is no reasonably apparent imminent threat present or once such an imminent threat is contained, the threat assessment team will meet to evaluate and respond to the threatening behavior. The superintendent may, but is not required to, review the following types of information:

- Review of the threatening behavior and/or communication;
- Interviews with the individuals involved including students, staff members, and family members as necessary and/or appropriate;
- Review of school and other records for any prior history or interventions with the students involved;
- Any other investigatory methods that the law enforcement unit determines to be reasonable and useful.

- The superintendent must confer with at least one member of the school's guidance counseling staff as part of his/her investigation. If the threat has been made by, or is directed towards, a student with a disability, the superintendent must confer with a staff member who is knowledgeable about special education services or Section 504 of the Rehabilitation Act, as appropriate.

At the conclusion of the investigation, the superintendent will determine what, if any, response to the threat is appropriate. The superintendent is authorized to disclose the results of his/her investigation to law enforcement and to the target(s) of any threatened acts. The superintendent may refer the individual of concern to the appropriate school administrator for consequences under the school's student discipline policy or, if appropriate, report the results of his/her investigation to the student's individualized education plan team.

Regardless of threat assessment activities, disciplinary action and referral to law enforcement will occur consistent with board policy and Nebraska law.

4. Communication with the Public about Reported Threats

To the extent possible, the superintendent will keep members of the school community informed about substantive threats and about the District's response to those threats. This communication may include oral announcements, written communication sent home with students, and communication through print or broadcast media. However, the superintendent will not reveal the identity of the individual of concern or of any target(s) of threatened violence unless permitted by law.

5. Coordination with the Crisis Team After Resolution of Threat

The superintendent will confer with the district's crisis team after a threat has been investigated to provide the crisis team with information that the crisis team may use in assessing or revising the district's All-Hazard School's Safety Plan.

Adopted on: July 11, 2022
Revised on: _____
Reviewed on: _____

3040 School Safety and Security

In order to fulfill its obligation to provide a safe and secure learning environment, the Board of Education has adopted this School Safety and Security Policy. Although the district will take reasonable steps to protect students and staff, no entity can provide complete safety and security at all times. This policy does not make the district a guarantor of the safety of students, staff or patrons.

I. General Safety and Security

a. NDE Rubric

The District will meet at least the minimum requirement for each school safety and security standard indicator adopted by the Nebraska Department of Education.

b. School Hours

- i. During a crisis situation, the administration will maintain established school hours and proceed with all co-curricular activities as scheduled whenever possible.
- ii. If, during a crisis situation, the parent(s) or guardian of a student decide that the student needs to be absent, this absence will be excused.

c. Access to School Facilities

- i. The school's facilities may not be used for funeral or memorial services during the school day.
- ii. This policy does not discourage the presentation of traditional American Legion memorial services which promote patriotism.

d. Memorials

- i. Memorials often create a visual reminder of a particular crisis that may reintroduce feelings of grief for students. Therefore, memorials are generally not allowed anywhere on school premises.

- ii. Individuals who wish to seek a waiver of the general prohibition against memorials must follow the steps outlined below:
 - a. The individual must first meet with the Superintendent or his/her designee to discuss the request for a memorial.
 - b. If the Superintendent determines that additional review is appropriate, he/she will refer the request for consideration by the crisis team.
 - c. The crisis team will consider:
 - i. The current research regarding the potential psychological harm that could be caused by a memorial;
 - ii. The potential disruption to the school's learning environment;
 - iii. The cost to the district of erecting and/or maintaining a memorial;
 - iv. Whether prior tragedies have been commemorated by a memorial;
 - v. The potential for future tragedies which could necessitate a similar memorial; and
 - vi. Any other factor which the crisis team deems relevant to its recommendation.
 - d. After consideration of the factors outlined above, the crisis team will make a recommendation as to whether the prohibition against memorials should be waived.

- e. The Superintendent will communicate the crisis team's recommendation to the individual requesting the memorial.
 - f. If the crisis team recommends waiver of the prohibition against memorials, the individual who made the initial request must inform the Superintendent if he/she wishes to ask the board to approve the memorial.
 - g. Memorials may only be approved by the board and only after completion of the process outlined in this policy.
- iii. This policy is not intended to discourage the acceptance of memorial funds or specific items.

II. Superintendent's Duties Related to Safety and Security

a. Appointment of Crisis Team

The Superintendent shall appoint members to serve on the school district's crisis team. The superintendent may, but is not required, to include representatives from the following groups on the crisis team:

- Administrators
- Teachers
- Health/mental health
- Facilities staff
- Transportation staff
- Food service staff member
- Information technology staff
- Students
- Parents
- Staff member with expertise on the needs of students with disabilities
- Organizations that serve the disabled
- Organizations that serve the needs of minority populations (ELL, race, etc.)
- Representatives from local early responders (law enforcement, fire and rescue personnel, railroad, factories, etc.)

b. Compliance with Fire and Safety Codes

The Superintendent will ensure that the school district meets all current fire and life safety codes or is in the process of coming into compliance.

c. Annual Safety Audits

The Superintendent will arrange for the performance of an annual safety audits using an external consultants utilizing the standardized audit protocol adopted by the Nebraska Department of Education.

d. Mutual Aid Agreements

The Superintendent will enter into mutual aid agreements to address the academic, physical, operational, psychological, and emotional recovery areas when possible with appropriate local entities.

III. Building Principals' Duties Related to Safety and Security

a. Positive and Safe Learning Environment

Each building principal shall implement a school-wide behavior process to create a positive and safe learning environment.

Each building principal shall conduct training on and require enforcement of the district's anti-bullying and dating violence policies.

Each building principal shall ensure that staff complete the required suicide prevention training as required by board policy.

Each building principal shall require staff to engage in active supervision of students at all times

b. Visitor Protocol.

Each building principal shall adopt a protocol for visitors to his/her school building to sign in upon arrival and departure and to be identified as a visitor while they are in the building during the school day. The protocol must also address visitors in specialized areas of the school such as playgrounds, gyms, cafeterias and the like.

This protocol may be written or unwritten but must be clearly communicated to and enforced by all staff.

The building principal will report individuals who repeatedly violate the visitor protocol to the superintendent for possible exclusion from school facilities pursuant to board policy.

c. Emergency Drills

Each building principal must ensure that the following drills are conducted in his/her building:

- i. Fire drills (evacuation): One fire drill conducted monthly with one additional drill being conducted during the first 30 days of school.
- ii. Tornado drills (shelter): One drill during the first two weeks of school and the second drill during the month of March.
- iii. Bus evacuation drills: Two drills during the school year involving all students and appropriate staff. Recommended that one drill occur during the first month of school.

Each building principal must also conduct any non-required drills recommended by crisis team.

Each building principal shall conduct a performance review of each of the drills conducted pursuant to this policy. This review does not have to be in writing.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3041

Crisis Team Duties

The crisis team is responsible for planning for the safety and security of the school, staff, and students. The teams will respond to and manage any safety or security incident that occurs in the school setting or which has the potential to disrupt the orderly operation of the school system.

1. Membership on and Chair of Team

The superintendent will appoint members to serve on the crisis team.

If the superintendent does not serve on the crisis team personally, he/she shall appoint an individual to serve as the chair of the crisis team. The chair of the crisis team shall have the responsibility of scheduling crisis team meetings, documenting crisis team actions and reporting to the board at least annually on the district's All-Hazard School Safety Plan and other activities of the crisis team.

2. Meetings of the Crisis Team

The crisis team will meet at least twice annually with representatives from local law enforcement and local fire and rescue personnel. At these meetings, the team will coordinate with local agencies to prepare for and communicate about a variety of real world scenarios.

The crisis team will meet at such additional times as necessary to fulfill the duties given to it pursuant to this policy.

3. School Self-Assessment

The crisis team shall conduct the self-assessment created by the Nebraska Department of Education as part of its School Safety and Security Standards. This assessment shall be conducted for each school building. The team shall report the results of this self-assessment to the superintendent and to the board of education.

Either the superintendent or the chair of the safety committee will also report the results of the self-assessment to the Nebraska Department of Education.

4. All-Hazard School Safety Plan

The crisis team will create an All-Hazard School Safety Plan. The plan must be customized to the needs of each of the school district's buildings. The plan must include all of the components required by the School Safety and Security Standards adopted by the Nebraska Department of Education, and shall meet at least the minimum indicators set by those Standards.

The crisis team shall share a copy of the district's All-Hazard School Safety Plan with local authorities and first responders.

The chair of the crisis team shall provide a copy of the district's All-Hazard School Safety Plan to the NDE Security Assessor at least one-week prior to the assessor's scheduled visit to the district.

5. Standard Response Protocol (SRP)

Crisis team shall be knowledgeable about the Standard Response Protocol promoted by the "I love u guys" Foundation.

The crisis team will coordinate with members of the administrative team to arrange for all students, employees and other individuals who routinely use the district's facilities to receive SRP training and guidance.

The crisis team will assess the need for SRP to be implemented at off campus locations where students may be present for school activities.

The crisis team will confer with individuals knowledgeable about students, staff or patrons who may have special needs in order for those individuals to be able to understand and implement the SRP.

6. Consultation With Building Principals

The crisis team shall confer with the principal of each building within the district to ensure that visible signage is present in each building which meets the needs of local emergency responders

The crisis team will review the utility of non-required drills in light of the needs and unique circumstances present within each building within the district. Non-required drills recommended by NDE include lock-down, lock out, evacuation, shelter and reunification process. The crisis team will consult with building principals to review both required and non-required drills.

7. Consultation with Threat Assessment Team

The crisis team will consult with members of the threat assessment team to determine if the district’s All-Hazard School Safety Plan has been appropriately implemented and if it should be modified or updated.

8. Review of Training

The crisis team shall review the training which the school system provides for specified employees in required areas to comply with local, state, and federal regulations.

The crisis team shall also review any non-required training which could be provided to appropriate staff to increase the safety and security of the school district and its students, staff and patrons. If the team believes such non-required training would be beneficial, it shall recommend to the superintendent that the training be provided to the identified staff member at district expense.

9. Communication with School Community and Stakeholders

The crisis team will work continuously to improve communication with the school community and relevant stakeholders. This communication shall include, but not be limited to, the communication strategies and protocols identified in the district’s All-Hazard School Safety Plan.

10. Communication with the Board of Education

The crisis team will report to the board at least annually on its activities. This report may be included as part of the superintendent’s report at a regular board meeting.

Adopted on: July 11, 2022
Revised on: _____
Reviewed on: _____

3042
Construction Management at Risk Contracts

This policy is adopted pursuant to the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. § 13-2901 through § 13-2914).

The board shall adopt a resolution by a two-thirds affirmative vote selecting the construction management at risk contract delivery system prior to proceeding with any of the steps involved with solicitation or execution of any construction contract. For a project authorized under subsection (3) of section 13-2914, the resolution shall include a statement that the political subdivision has made a determination that the construction management at risk contract delivery system is in the public interest based, at a minimum, on one of the following criteria: (a) Savings in cost or time or (b) requirement of specialized or complex construction methods suitable for the construction management at risk contract delivery system.

Definitions. For purposes of this policy:

1. Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the school district, (b) acts as a construction consultant to the school district during the design development phase of the project when the school district's architect or engineer designs the project, and (c) is the builder during the construction phase of the project;
2. Construction manager means the legal entity which proposes to enter into a construction management at risk contract pursuant to the Act;
3. Proposal means an offer in response to a request for proposals by a construction manager to enter into a construction management at risk contract for a project pursuant to the act;
4. Request for proposals means the documentation by which a school district solicits proposals; and
5. School district means Lyons-Decatur Northeast Schools.

Procedures.

1. Procedures for the preparation and content of requests for proposals shall include the following:

- A. At least thirty days prior to the deadline for receiving and opening proposals, notice of the request for proposals shall be published in a newspaper of general circulation within the school district and filed with the State Department of Education. The request for proposals shall contain, at a minimum, the following elements:
 1. The identity of the school district for which the project will be built and the school district that will execute the contract;
 2. Policies adopted by the school district pursuant to the Act;
 3. The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
 4. Any bonds and insurance required by law or as may be additionally required by the school district;
 5. General information about the project which will assist the school district in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;
 6. The criteria for evaluation of proposals and the relative weight of each criterion; and
 7. A description of any other information which the school district chooses to require.
2. Procedures for the preparation and submission of proposals by the

construction manager shall be determined on a project-by-project basis and included within the requests for proposals.

3. Procedures for evaluating requests for proposals submitted to the school district by a construction manager shall include the following:

A. The school district shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the school district. Members of the selection committee shall include (1) members of the school board, (2) members of the school administration or staff, (3) the school's architect or engineer (4) any person having special expertise relevant to selection of a construction manager under the Act, and (5) a resident of the school district other than an individual included in subdivisions (1) through (4) of this subsection. A member of the selection committee designated under subdivision (4) or (5) of this subsection shall not be employed by or have a financial or other interest in a construction manager who has a proposal being evaluated and shall not be employed by the school district or the school's architect or engineer.

B. The selection committee and the school district shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (1) through (7) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

(1) The financial resources of the construction manager to complete the project **(up to ten percent)**;

(2) The ability of the proposed personnel of the construction manager to perform **(up to thirty percent)**;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the construction manager **(up to thirty percent)**;

(4) The quality of performance on previous projects **(up**

to thirty percent);

- (5) The ability of the construction manager to perform within the time specified **(up to thirty percent);**
- (6) The previous and existing compliance of the construction manager with laws relating to the contract **(up to ten percent);** and
- (7) Such other information as may be secured having a bearing on the selection **(up to twenty percent).**

The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of NEB. REV. STAT. § 84-712.01.

- C. The school district shall then evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee.
4. Procedures for negotiations between the school district and the construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated shall include the following:
- A. The school district may attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations.
 - B. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor.
 - C. If the school district is unable to negotiate a satisfactory contract with the highest ranked construction manager, the school district may terminate negotiations with that construction manager. The school district may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations.
 - D. If the school district is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the school district may undertake negotiations with the third highest ranked construction manager, if any,

- and may enter into a construction management at risk contract after negotiations.
- E. If the school district is unable to negotiate a satisfactory contract with any of the ranked construction managers, the school district may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the act.
 - F. If the school district is able to negotiate a satisfactory contract with a construction manager, the school district shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the construction manager shall file a copy of all contract modifications and change orders with the State Department of Education.
5. Procedures for filing and acting on formal protests relating to the solicitation or execution of construction management at risk contracts shall include the following:
- A. Definitions.
 - (1) Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the school district to another party or by the failure of the school district to award a contract to such actual or prospective bidder.
 - (2) Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification, preparation, bid solicitation, and intent to award.
 - B. Right to Protest. An interested party may protest to the Superintendent. The protest shall be submitted in writing on company letterhead within five working days after public notice of the bid. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening or the closing date for receipt of proposals. In all other cases, the protest must be filed within five working days following the selection of the construction manager. To expedite handling of protests, the envelope containing the protest should be

clearly labeled "Protest". The written protest shall include as a minimum the following:

- (1) The name and address of the interested party;
- (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- (3) A detailed statement of reasons for the protest;
- (4) Supporting, exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated; and a list of all persons who have knowledge of facts relevant to the protest; and
- (5) The action(s) the protestor desires the school district to take to resolve the protest.

The Superintendent will immediately decide upon receipt of the protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. The school district shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract, if awarded, unless the Superintendent makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of the school district.

- C. Authority to Resolve Protests. Prior to the commencement of an administrative review by the Board concerning any protest, the Superintendent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Superintendent shall create and deliver a Decision to the protestor within a reasonable time after the written protest was received. The Decision shall include a written summary of the Superintendent's investigation and a recommendation regarding the outcome of the protest. The Decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the

administrative review by the Board. A copy of the Decision shall be mailed or otherwise furnished immediately to the interested party and any other party intervening protester and all other bidders. If not satisfied with the decision of the Superintendent, any interested party protester may appeal to the Board, but the decision shall be final unless the interested party protester files a timely appeal with the Board.

D. Board Appeal Procedures. Any interested party protester, within five working days of receipt of a decision of the Superintendent, may file with the Superintendent a written notice of appeal for an administrative review before the Board. The Notice of Appeal must clearly state the action protested and the basis of appeal. The Board will conduct an administrative review at its next regularly scheduled meeting or at a special meeting. The school district board of education shall consider the Decision of the Superintendent and shall make the final decision on the protest. The school district board of education's decision shall be final.

6. A construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the school district in agreement with the construction manager to make changes in the project without invalidating the contract. Later refinements shall not exceed the scope of the project statement contained in the request for proposals.

Prohibitions. The school district shall not use a construction management at risk contract for any construction project excluded by NEB. REV. STAT. § 13-2914 or any other applicable law.

Adopted on: August 30, 2021

Revised on: _____

Reviewed on: _____

3043 Design-Build Contracts

This policy is adopted pursuant to the Political Subdivisions Construction Alternatives Act (NEB. REV. STAT. § 13-2901 through § 13-2914).

The board shall adopt a resolution by a two-thirds affirmative vote selecting the design-build contract delivery system prior to proceeding with any of the steps involved with solicitation or execution of any construction contract. For a project authorized under subsection (3) of section 13-2914, the resolution shall include a statement that the political subdivision has made a determination that the design-build contract delivery system is in the public interest based, at a minimum, on one of the following criteria: (a) Savings in cost or time or (b) requirement of specialized or complex construction methods suitable for the design-build contract delivery system.

Definitions. For purposes of this policy:

1. Board means the District's Board of Education.
2. Department means the Nebraska Department of Education.
3. Design-Build Contract (DB Contract) means a contract which is subject to qualification-based selection between the District and a Design-Builder to furnish (a) architectural, engineering, and related design services for a project pursuant to the Nebraska Political Subdivisions Construction Alternatives Act (Act) and (b) labor, materials, supplies, equipment, and construction services for a project pursuant to the Act.
4. Design-Builder means a legal entity which proposes to enter into a DB Contract which is subject to qualification-based selection pursuant to the Act.
5. District means Lyons-Decatur Public Schools.
6. NEARA means the Nebraska Engineers and Architects Regulation Act.
7. Performance-Criteria Developer (PCD) means any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the NEARA who is selected by the District pursuant to this policy to assist the District in the development of Project Performance Criteria, Requests For Proposals, evaluation of Proposals, evaluation of construction under

a DB Contract to determine adherence to the Project Performance Criteria, and any additional services requested by the District to represent its interests in relation to a project.

8. Project Performance Criteria means the performance requirements of the project suitable to allow the Design-Builder to make a Proposal. Performance requirements include the following, if required by the project: capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm weather retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project.
9. Proposal means an offer in response to a Request For Proposals ("RFP") by a Design-Builder to enter into a DB Contract for a project pursuant to the Act.
10. Act means the Nebraska Political Subdivisions Construction Alternatives Act.
11. Request for Proposals (RFP) means the documentation by which the District solicits Proposals.
12. Superintendent means the District's Superintendent of Schools.

Procedures. The District shall follow the procedures below in connection with any DB Contract.

1. Rules and Procedures for Selecting and Hiring a PCD for a Specific Project.

A. The District shall encourage eligible persons or organizations who desire to provide services to the District as a PCD to submit a statement of qualifications and performance data to the District. At least thirty days prior to selecting and hiring a PCD, the District shall publish notice in a newspaper of general circulation in the District that it is seeking a PCD for a design-build project. The notice shall include the following:

- (1) A general description of the Design-Build project;

- (2) Directions regarding how interested persons or organizations can apply for consideration by the District;
 - (3) The date by which persons or organizations must submit their applications; and
 - (4) A statement that any person or organization applying for consideration by the District must obtain a copy of the District's Design-Build Contract Policy from the Superintendent.
- B. To apply to be the District's PCD, applicants must submit a current statement of qualifications and performance data to the District. The statement of qualifications must include evidence that the applicant is licensed or certified to practice architecture or engineering pursuant to the NEARA. Applicants must update any information provided to the District to reflect any changed conditions of the applicant.
- C. Applicants shall first be certified by the Superintendent as qualified to act as a PCD for the District. In order to certify an applicant, the Superintendent shall make a finding that a PCD is fully qualified to render the required service. Factors to be considered in making this finding shall include capabilities to perform, adequacy of personnel, past record and performance, and experience; and may also include consideration of recent, current, and projected workloads; experience; equipment and facilities; promptness, and the quality of work previously done by applicant; suitability to the particular task; willingness to meet time and budget requirements; and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, the applicant could perform it strictly in accordance with its terms capabilities to perform.
- D. The Board shall evaluate each qualified applicant's current statement of qualifications and performance data. The Board shall conduct discussions with, and may require public presentations by no less than three applicants regarding their qualifications, approach to the project, ability to furnish the required service, and other factors identified above.
- E. The Board shall select, in order of preference, at least three applicants deemed to be most highly qualified to perform the required services after considering the factors outlined above.

- F. The Board shall negotiate a contract with the most qualified applicant for compensation which the Board determines is fair and reasonable. In making this determination, the Board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For all lump-sum or cost-plus-a-fixed-fee professional service contracts, the Board shall require the applicant receiving the award to execute a certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Board determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.
- G. If the Board is unable to negotiate a satisfactory contract with the applicant considered to be the most qualified at a price the Board determines to be fair and reasonable, it shall terminate negotiations with that applicant. The Board may then undertake negotiations with the second most qualified applicant. If the Board fails to reach an agreement with the second most qualified applicant, it shall terminate negotiations with that applicant. The Board shall then undertake negotiations with the third most qualified applicant.
- H. If the Board is unable to negotiate a satisfactory contract with any of the selected applicants, it shall either select additional applicants in order of their competence and qualification and continue negotiations in accordance with this policy until an agreement is reached or review the agreement under negotiation to determine the possible cause for failure to achieve a negotiated agreement.
- I. The Board may designate a committee to carry out any or all of the Board's duties under the PCD selection section of this policy, provided that the Board must approve any agreement with an applicant prior to its execution. Any such committee must have among its membership at least one person who is licensed to practice architecture or engineering pursuant to the NEARA.

- J. The public shall not be excluded from the meetings or proceedings under this section of this policy in accordance with the Open Meetings Act.
- K. The contract between the District and the PCD shall contain a prohibition against contingent fees as follows: "The PCD warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PCD, to solicit or secure this agreement and that the PCD has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PCD, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or the making of this agreement." Upon violation of such provision, the District shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, or consideration.
- L. The PCD is ineligible to be included as a provider of any services in a Proposal for the project on which it has acted as a PCD.
- M. A PCD may not be employed by or may not have a financial or other interest in a Design-Builder that will submit a Proposal.

2. Procedures and standards to be used to prequalify Design-Builders.

- A. The District, with the help of the PCD, shall prepare a request for letters of interest. The request for letters of interest shall:
 - (1) Describe the project in sufficient detail to permit a Design-Builder to submit a letter of interest;
 - (2) Be published in a newspaper of general circulation within the District at least 30 days prior to the deadline for receiving letters of interest; and
 - (3) Be sent by first-class mail to any Design-Builder upon request.
- B. Letters of interest shall be reviewed by the District in consultation with the PCD. The District and the PCD will evaluate prospective Design-Builders based on the information submitted to the District in response to the request for letters of interest.

- C. The District shall select at least three prospective Design-Builders, except that if only two Design-Builders have submitted letters of interest, the District shall select at least two prospective Design-Builders. Such selected Design-Builders shall be considered prequalified and eligible to receive and respond to the RFP.
- D. The District and PCD shall use the following standards when selecting which prospective Design-Builders to prequalify: capabilities to perform, adequacy of personnel, past record and performance, and experience; and may also include consideration of recent, current, and projected workloads; experience; equipment and facilities; promptness, and the quality of work previously done by applicant; suitability to the particular task; willingness to meet time and budget requirements; and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, the applicant could perform it strictly in accordance with its terms capabilities to perform.

3. Procedures for the preparation and content of RFPs.

- A. The District, with the help of the PCD, shall prepare the RFP, which shall contain:
 - (1) The identity of the school district for which the project will be built and will execute the Design-Build Contract;
 - (2) A copy of this Design-Build Contract Policy and all other policies adopted by the District relating to the DB Contract;
 - (3) The proposed terms and conditions of the DB Contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the Design-Builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;
 - (4) A project statement which contains information about the scope and nature of the project;
 - (5) Project Performance Criteria;
 - (6) Budget parameters for the project;

- (7) Any bonds or insurance required by law or as may be additionally required by the District;
- (8) The criteria for evaluation of Proposals and the relative weight of each criterion;
- (9) A requirement that the Design-Builder provide a written statement of its proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction but shall not include price proposals;
- (10) A requirement that the Design-Builder agree to the following conditions:
 - (i) An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services;
 - (ii) At the time of the design-build offering, the Design-Builder will furnish to the Board a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project;
 - (iii) The architect or engineer engaged by the Design-Builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the Design-Builder prior to the completion of the project without the written consent of the Board;
 - (iv) A Design-Builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will: (a) comply with the NEARA by procuring a certificate of authorization to practice architecture or engineering and (b) submit proof of sufficient professional liability insurance; and
 - (v) The rendering of architectural or engineering services by a licensed architect or engineer employed by the Design-Builder will conform to the NEARA and rules and regulations adopted under the Act; and
- (11) Other information the District chooses to require.

- B. At least 30 days prior to the deadline for receiving and opening Proposals, the notice of the RFP shall be:
 - (1) Published in a newspaper of general circulation within the District;
 - (2) Filed with the Department; and
 - (3) Sent by first-class mail to the prequalified Design-Builders only.

4. Procedures for preparing and submitting Proposals.

- A. Prequalified Design-Builders shall prepare and submit Proposals as required by the RFP.
- B. All Proposals shall be sealed. Proposals shall not be opened until expiration of the time established for making Proposals as set forth in the RFP.
- C. Proposals may be withdrawn at any time prior to acceptance.
- D. The District has the right to reject any and all Proposals except for the purpose of evading the law. The District may thereafter solicit new Proposals using the same or a different Project Performance Criteria.

5. Procedures for evaluating Proposals.

- A. The District may only proceed to negotiate and enter into a DB Contract if there are at least two proposals from prequalified Design-Builders.
- B. The District shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the District. Members of the selection committee shall include (1) members of the school board, (2) members of the school administration or staff, (3) the school's architect or engineer (4) any person having special expertise relevant to selection of a design-builder under the Act, and (5) a resident of the District other than an individual included in subdivisions (1) through (4) of this subsection. A member of the selection committee designated under subdivision (4) or (5) of this subsection shall not be employed by or have a financial or other interest in a design-builder who has a proposal being evaluated and shall not be employed by the District or the school's architect or engineer.

C. The selection committee and the District shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (1) through (7) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

- (1) The financial resources of the design-builder to complete the project **(up to ten percent)**;
- (2) The ability of the proposed personnel of the design-builder to perform **(up to thirty percent)**;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder **(up to thirty percent)**;
- (4) The quality of performance on previous projects **(up to thirty percent)**;
- (5) The ability of the design-builder to perform within the time specified **(up to thirty percent)**;
- (6) The previous and existing compliance of the design-builder with laws relating to the contract **(up to ten percent)**; and
- (7) Such other information as may be secured having a bearing on the selection **(up to twenty percent)**.

~~NOTE TO BE DELETED: The percentages listed above must be modified so that they add up to 100%. This can be done directly in the policy, at the time the school board designates the Design-Build method for a specific project, or at a later time but before the RFP is published and sent out.~~

The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of NEB. REV. STAT. § 84-712.01.

D. The District shall then evaluate and rank each proposal on the basis of best meeting the criteria in the request for

proposals and taking into consideration the recommendation of the selection committee.

6. Procedures for Negotiations between the District and Design-Builders Submitting Proposals Prior to the District's Acceptance of a Proposal.

- A. The District may attempt to negotiate a DB Contract with the highest ranked Design-Builder selected by the Board and may enter into a DB Contract after negotiations.
- B. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor.
- C. If the District is unable to negotiate a satisfactory DB Contract with the highest ranked Design-Builder, it may terminate negotiations with that Design-Builder. The District may then undertake negotiations with the second highest ranked Design-Builder and may enter into a DB Contract with that Design-Builder after negotiations.
- D. If the District is unable to negotiate a satisfactory DB Contract with the second highest ranked Design-Builder, it may terminate negotiations with that Design-Builder. The District may then undertake negotiations with the third highest ranked Design-Builder, if any, and may enter into a DB Contract with that Design-Builder after negotiations.
- E. If the District is unable to negotiate a satisfactory DB Contract with any of the ranked Design-Builders, it may either revise the RFP and solicit new Proposals or cancel the design-build process.
- F. If the District is able to negotiate a satisfactory contract with a design-builder, the District shall file a copy of all design-build contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the design-builder shall file a copy of all contract modifications and change orders with the State Department of Education.

7. Procedures for Filing and Acting on Formal Protests Relating to the Solicitation or Execution of DB Contracts.

- A. Definitions.
 - (1) Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the District to another party

or by the failure of the District to award a contract to such actual or prospective bidder.

- (2) Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification, preparation, bid solicitation, and intent to award.

B. Right to Protest. An interested party may protest to the Superintendent. The protest shall be submitted in writing on company letterhead within five working days after public notice of the bid. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening or the closing date for receipt of proposals. In all other cases, the protest must be filed within five working days following the selection of the design-builder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest". The written protest shall include as a minimum the following:

- (1) The name and address of the interested party;
- (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- (3) A detailed statement of reasons for the protest;
- (4) Supporting, exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated; and a list of all persons who have knowledge of facts relevant to the protest; and
- (5) The action(s) the protestor desires the school district to take to resolve the protest.

The Superintendent will immediately decide upon receipt of the protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. The school district shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract, if awarded, unless the Superintendent makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of the District.

- C. Authority to Resolve Protests. Prior to the commencement of an administrative review by the Board concerning any protest, the Superintendent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Superintendent shall create and deliver a Decision to the protestor within a reasonable time after the written protest was received. The Decision shall include a written summary of the Superintendent's investigation and a recommendation regarding the outcome of the protest. The Decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review by the Board. A copy of the Decision shall be mailed or otherwise furnished immediately to the interested party and any other party intervening protester and all other bidders. If not satisfied with the decision of the Superintendent, any interested party protester may appeal to the Board, but the decision shall be final unless the interested party protester files a timely appeal with the Board.
- D. Board Appeal Procedures. Any interested party protester, within five working days of receipt of a decision of the Superintendent, may file with the Superintendent a written notice of appeal for an administrative review before the Board. The Notice of Appeal must clearly state the action protested and the basis of appeal. The Board will conduct an administrative review at its next regularly scheduled meeting or at a special meeting. The school district board of education shall consider the Decision of the Superintendent and shall make the final decision on the protest. The school district board of education's decision shall be final.

8. Refinements and Changes. A DB Contract may be conditioned upon later refinements in scope and price and may permit the District, in agreement with the Design-Builder, to make changes in the project without invalidating the DB Contract. Later refinements shall not, however, exceed the scope of the project statement contained in the RFP.

9. Projects Excluded. The District shall not use a design-build contract for any construction project excluded by NEB. REV. STAT. § 13-2914 or any other applicable law.

Adopted on: ~~_____~~ July 11, 2022

Revised on: _____

Reviewed on: _____

3044 Incidental or De Minimis Use of Public Resources

The board prohibits its members and employees from using public resources for personal or political purposes as prohibited in the Nebraska Political Accountability and Disclosure Act ("Act"). However, the board recognizes that incidental or de minimis uses of public resources are sometimes necessary and within reason. The purpose of this policy is to comply with the Act and to authorize certain uses of public resources as permitted by the Act.

The following uses of public resources are permitted as incidental or de minimis:

- Limited communications with family members or other non-district employees for personal purposes, such as e-mails or text messages with a spouse using district hardware, software, internet, accounts, or other public resources so long as this communication does not distract from or interfere with employees performing their official duties, with interference determined in the sole and unfettered discretion of an employee's supervising administrator;
- Traveling to or from the person's home when the primary purpose serves the interests of the district. If an employee is unsure whether the primary purpose serves the interests of the district, the employee should obtain the approval of his or her supervising administrator, who is authorized to make that determination under this policy;
- Making a limited number of copies of personal documents when the person cannot make alternative arrangements;
- Using personal social media accounts or accessing appropriate websites which are consistent with the district's digital citizenship curriculum while off duty;
- Using district-owned computer programs, such as Word, Excel, Adobe, and others for personal purposes while off duty;
- Any other uses contained in the collective bargaining agreement or individual contract of the employee;
- Other uses by employees authorized by the superintendent or superintendent's designee. The board intends to allow the superintendent to authorize such uses on a case-by-case basis to the maximum extent permitted by the Act; and
- Other uses by the superintendent or board members authorized by the board president. The board intends to allow the board president to authorize such uses on a case-by-case basis to the maximum extent permitted by the Act

All uses pursuant to this policy must be (1) consistent with other district policies, (2) consistent with the provisions of Title 92, Nebraska Administrative Code, Chapter 27 (Nebraska Department of Education "Rule 27"), and (3) reported as compensation in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. It is the responsibility of each board member or employee to account for their own tax liability, and the district will not indemnify or account for any personal use of public resources by the board member or employee.

All of the provisions of Rule 27 will apply to non-certificated staff for the purposes of this policy. In addition, employees may not use the school's internet, computers, or other technology to access obscene or pornographic material, sext, or engage in any illegal activities.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3045 Use of Sniffer Dogs

The board of education finds that the possession of illegal drugs and other contraband on school grounds is unlawful, is disruptive of the educational process, is harmful to students and staff, and is contrary to the interests of the school district. Accordingly, to minimize the presence of these items on school grounds, the administration is authorized to use sniffer dogs according to the protocol set forth in this policy.

Protocol for Use of Sniffer Dogs

1. The superintendent, or the building principal with the superintendent's permission, may initiate the use of specially trained sniffer dogs to conduct an inspection.
2. The administration will contact the canine provider and/or the appropriate law enforcement agency to schedule the use of a sniffer dog or dogs. The administration shall require an assurance from the provider that any sniffer dogs to be used in the school have been properly trained, and may request evidence of the training and/or certification of the dogs. In no event will the school district authorize a sniffer dog to sniff any person.
3. The superintendent or if designated by the superintendent, the building principal, and law enforcement representatives or canine provider will confer regarding the specific plan of areas to be inspected. The plan may involve any or all school building facilities, vehicles in the school parking lot, or other areas where student and staff vehicles are parked on school property during or after school hours.
4. If the inspection is scheduled for a day when school is in session, students and staff will be informed over the public address system, and will be directed to remain in their rooms until given further directions.
5. During the inspection, administrators may assign personnel to designated areas as deemed appropriate to assist in the smooth handling of the inspection.
6. After the inspection is finished, students and staff will be notified over the public address system, and will be thanked for their cooperation.
7. If the sniffer dog alerts, the alert will constitute reasonable cause for the administration to conduct a search of the property. If the sniffer

dog alerts on a vehicle on school grounds, the owner will be required to unlock the vehicle doors and trunk for further inspection of the interior of the vehicle. If the owner refuses to unlock the vehicle, the matter will be turned over to law enforcement authorities. The owner will be subject to disciplinary action as specified in board policy and/or the student or staff handbook or as otherwise allowed by law. This may include discipline for the refusal to obey an administrative directive.

8. Any illegal drugs or contraband found on school grounds, whether in a desk, locker, vehicle, or any other place on school grounds, will be confiscated and turned over to law enforcement authorities. A student's parents will be contacted. The individual will be subject to disciplinary action as specified in board policy and/or the student or staff handbook or as otherwise allowed by law.
9. At the conclusion of the inspection, school officials will confer with the canine provider and/or any law enforcement authorities who were involved in the inspection to review the results of the inspection. The administration may authorize any follow-up inspections or other action deemed appropriate.

NOTICE TO STUDENTS AND STAFF

Students and staff shall be informed of the District's policy regarding the use of sniffer dogs as soon as practicable after the adoption of this policy. Thereafter, students and staff shall be informed of the policy at the beginning of the school year. By this policy and/or via the provision in the student or staff handbook, students and staff are specifically notified that:

1. Lockers may be sniffed by sniffer dogs at any time.
2. Vehicles parked on school property may be sniffed by sniffer dogs at any time.
3. Classrooms and other common areas may be sniffed by sniffer dogs at any time students and staff are not present.
4. If contraband of any kind is found, the student or staff member shall be subject to appropriate disciplinary action.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3046 Animals at Schools

Animals are not allowed in school district buildings or on school district property without the written permission of the superintendent or his or her designee except as provided in this policy or as otherwise required by law.

I. USE OF ANIMALS FOR INSTRUCTIONAL PURPOSES

Animals that support a district program or curriculum or that are used for instructional purposes are allowed in school district buildings or on school district property with the written permission of the superintendent or building principal.

II. SERVICE ANIMALS

The school district does not permit discrimination against individuals with disabilities, including those who require the assistance of a service animal. An individual with a disability is permitted to be accompanied by his/her service animal on school property when required by law, subject to the conditions of this policy.

Service Animal. A "service animal" is a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Work or tasks **do not** include the crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship. The work or tasks performed by a service animal must be directly related to the handler's disability or necessary to mitigate a disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. **See also**, Miniature Horses below.

School District Inquiries. School officials **may** ask the owner or handler of an animal whether the animal is required because of a disability and what work or task the animal has been trained to do **unless** the answers to these inquiries are readily apparent. School officials **may not** ask about the nature or extent of a person's disability and may not require documentary proof of certification or licensing as a service animal.

Procedural Requirements. The following requirements must be satisfied **before** a service animal will be allowed in school buildings or on school grounds:

Request. A person who wants to be accompanied by his/her service animal must submit a written request form to a principal or superintendent. The request form is attached to this policy. These requests must be renewed each school year or whenever a different service animal will be used. When a request to be accompanied by a service animal is submitted by, or on behalf of, a student who has an Individualized Education Program (IEP) and/or a Section 504 Plan, then the request shall be promptly referred to the student's respective IEP Team and/or 504 Team for its consideration and/or input.

Health and Vaccination. The owner or handler must have proof of current licensure from the local licensing authority including proof of the service animal's current vaccinations and immunizations required by law.

Service animals will not be allowed in school buildings or other school property until the school has approved the request.

Control. A service animal must be under the control of its handler at all times. The service animal must have a harness, backpack, vest identifying the dog as a trained service dog, leash, or other tether. If the handler is unable to use a harness, backpack, vest, leash, or other tether, because of a disability or the use of a harness, backpack, vest, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, the use of these items is not required. However, the service animal must be otherwise under the handler's control.

Exclusion or Removal from School. A service animal may be excluded from school property and buildings if a school administrator determines that:

- (1) A handler does not have control of the service animal;
- (2) The service animal is not housebroken;
- (3) The service animal presents a direct and immediate threat to others in the school; or
- (4) The animal's presence fundamentally alters the nature of the service, program, or activity.

The handler or the student's parent or guardian shall be required to remove the service animal from school premises immediately upon such a determination. If the service animal is removed, the individual with a disability shall be provided with the opportunity to participate in the service, program, or activity without the service animal.

Allergic Reactions. If any student or school employee assigned to a classroom or mode of transportation in which a service animal is permitted suffers an allergic reaction to the service animal, the person having custody and control of the animal will be required to remove the animal to a different location designated by an administrator. The school will arrange a meeting between school personnel, the individual with the disability, and the parents or guardian(s) of the person with the disability if that person is a student to develop an alternate plan.

Supervision and Care of Service Animals. The owner or handler of a service animal is solely responsible for the supervision and care of the animal, including any feeding, exercising, and clean up while the animal is in a school building or on school property. The student's parent or guardian is responsible for providing for the supervision and the care of the animal in the event that his or her student is not able to do so. The school district is not responsible for providing any care, supervision, or assistance for a service animal.

Extra Charges. The owner or handler of a service animal will not be required to pay an admission fee or a charge for the animal to attend events for which a fee is charged.

Damage to School Property and Injuries. The owner or handler of a service animal is solely responsible and liable for any damage to school property or injury to personnel, students, or others caused by the animal.

Miniature Horses. Requests to permit the use of a miniature horse by an individual with a disability will be addressed on a case-by-case basis by considering the following factors:

- (1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- (2) Whether the handler has sufficient control of the miniature horse;
- (3) Whether the miniature horse is housebroken; and
- (4) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

All additional requirements outlined in this policy, which apply to service animals, shall apply to miniature horses.

Service Animal in Training. This policy shall also be applicable to service animals in training that are accompanied by a bona fide trainer.

Denial of Access and Grievance. If a school official denies a request for access of a service animal, the disabled individual or parent or guardian can file a written grievance with the school’s Section 504 Coordinator.

III. THERAPY ANIMALS

A “therapy animal” is an animal that has been individually trained and certified to work with its owner to provide emotional support, well-being, comfort, or companionship. Therapy animals are not “service animals” as that term is used in the Americans with Disabilities Act.

Therapy animals will not be allowed on school grounds or school property except as otherwise required by law.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3047 Data Breach Response

I. Preparation

A data breach is an instance in which personal information as defined by state law or personally identifiable information as defined by federal law is released or accessed in an unauthorized manner. The district will implement and maintain reasonable security procedures and practices that are appropriate to the nature and sensitivity of the personal information handled by the district. In order to ensure compliance with state and federal law; in the event of a breach the following preparatory steps shall be taken.

A. Data Governance

The superintendent, or their designee, will create an annually updated data directory that will include:

1. Computing devices purchased by the district,
2. Software that is installed on district devices,
3. Staff members with access to district devices,
4. Staff members with active usernames and passwords for any district software.

B. New Devices and Software

Any new software or device that is used in a district building for district purposes will be submitted to the superintendent or their designee for inclusion in the directory.

II. Incident Response Plan

A. Assessment and Investigation

1. If the District becomes aware of a data breach it will make every reasonable effort to remedy the cause of the breach as soon as possible.
2. The District will conduct a good faith, reasonable, and prompt investigation to determine the likelihood that

personal information has been or will be used for an unauthorized purpose.

3. This investigation will include, but not be limited to, an assessment of what software, hardware, and physical documents were accessed; which District personnel had access to the compromised data; and what specific data was compromised.

B. Notification of Affected Individuals

1. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the district shall give notice to the affected Nebraska resident.
2. Notice shall be made as soon as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

C. Notification of Law Enforcement and Outside Organizations

1. Should notice of the breach be required to any individual, notice of the breach will be simultaneously sent to the Nebraska Attorney General's office.
2. The Superintendent will determine if the Family Policy Compliance Office will be notified of the breach.
3. The Superintendent will determine if the Privacy Technical Assistance Center will be notified of the breach.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3048 Communicable Disease

The school district strives to provide a safe environment for both students and staff while safeguarding the rights of all students and employees, including those with communicable diseases.

Communicable Diseases. Communicable diseases are defined by the Nebraska Department of Health and Human Services in Title 173 Nebraska Administrative Code Chapter 1 and include HIV/AIDS, Hepatitis (A, B, and E), Measles, Mumps, and Tuberculosis.

School Attendance and Participation in School Sponsored Activities. A student who has been diagnosed with a communicable disease shall be provided with educational services in accordance with state law and board policy. Generally, individuals with a communicable disease will be restricted only to the extent necessary to prevent the transmission of the disease, to protect their health and rights of privacy, and to protect the health and safety of others. The decision regarding a student's education program and placement shall be made on an individual basis in light of current medical and educational information and recommendations. These will be determined by the superintendent, the student's Section 504 or Individualized Education Program (IEP) team, or the district's Crisis Team. In addition, participation in Nebraska School Athletic Association (NSAA) events will be subject to its rules and procedures, if any.

Infection and Exposure Control Procedures/Universal Precautions. The district will monitor the information available through the Federal Centers for Disease Control, the Nebraska Department of Health and Human Services, and the Occupational Safety and Health Administration. This policy and any procedures, universal precautions, or exposure control plan will be modified, if appropriate, based upon the best new medical information provided by the above sources.

The superintendent will take appropriate measures if there is an epidemic or outbreak of a communicable disease which may include, but it's not limited to, the emergency exclusion or alternative placement of students or the closure of a school building or the entire school district.

Confidentiality. The existence of an individual's communicable disease shall be treated as confidential and will be limited to school staff on a "need-to-know" basis. If it is necessary to inform a person of another's condition (due to exposure, for instance), the person will be notified of the confidentiality of that disclosure. In addition, any communication about a student's

communicable disease shall be consistent with that student's IEP or Section 504 Plan, if any.

Staff Training. Staff will receive training regarding communicable diseases and the requirements of this policy and any adopted procedures as part of the training received under the Workplace Injury Prevention and Safety Committee policy.

Reporting. School staff who learn that an individual has a communicable disease will report it to the proper authority as required by Title 173 Nebraska Administrative Code Chapter 1

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3049
Drones and Unmanned Aircraft

Drones, Unmanned Aircraft Systems, and any other such vehicles (“drones”), which are not operated for purposes of district programs or activities, may not be operated on or above district property without the prior written permission of the superintendent or designee. Any authorized use of drones must comply with all state and federal regulations governing the operation of drones, including FAA regulations.

Drones owned by the district or operated on or above district property with permission must be operated:

1. In compliance with this policy and all other district policies;
2. Only outside the school building(s) in the area authorized or designated by the superintendent or designee;
3. Under the direct supervision of an individual fully trained and skilled in the system’s operation;
4. By an individual with the requisite skill and training to safely operate the drone; and
5. Consistent with any other limitations imposed by the superintendent or designee.

Any monitoring or recording of picture, video, or audio by a drone must have the prior written permission of the superintendent or designee and comply with all board policies governing recordings, data, and records.

Any unauthorized use of a drone is strictly prohibited. Devices used in a manner that does not comply with this policy or applicable state and federal law may be confiscated and the operator may be subject to discipline, civil liability, or criminal liability.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3050 Technology in the Classroom

I. In General

The district desires to use technology in a way that aides in the education of students. New devices and applications offer a number of helpful tools that can improve the student experience and increase learning. Many of these devices and applications also create concerns about student privacy. It is the goal of the district to embrace the helpful elements of technological advancement while remaining mindful of potential student privacy issues.

II. Devices

A. Non-district issued electronic devices may be used in the classroom, under supervision of a staff member. Teachers who wish to bring a device into the classroom on a regular or permanent basis, should inform the principal before deploying the device.

1. Smart speakers such as Google Home, Amazon Echo, Apple HomePod, and similar devices may be used in the classroom. The device must be registered to an account linked to the classroom teacher's school email address. The district will not maintain any records created by use of the smart speaker device. Any record of use will be considered non-record communications pursuant to Nebraska's Records Management Act, and not be maintained by the district.
2. Assistive technology may be used in district classrooms. Any assistive technology, such as an AngelSense device, that uses "listen-in" functionality must have that function disabled while the student using the device is in a district classroom. No assistive technology devices will be permitted to record or transmit the classroom activity of other students unless required by law.
3. All other electronic devices that connect to the internet that a staff member wishes to use for the education of students should be disclosed to the administration prior to use. The district may at any time direct that a teacher discontinue use of a given device.

- B. Any classroom recordings made by a staff member will be made pursuant to district policy.

III. Applications

A. School as Agent. The school will serve as an agent for parents/guardians in the collection of information within the school context. The school's use of student information is solely for education purposes.

B. District Applications. The district uses various software applications to record, track, and store student data. Each application selected by the district is in compliance with federal and state law, to the best of the administration's knowledge. Should the district become aware that an application used by the district has suffered a data breach, or been found to be out of compliance with federal or state law, the district will investigate the scope of the violations and notify students, parents, and staff in accordance with district policy.

C. Staff-Selected Applications.

1. Staff are permitted to select applications for use in the classroom.
2. Staff must perform basic due diligence to ensure that the application is safe for students and serves a pedagogical purpose. Staff must notify their supervising administrator of the application they plan to use as part of their lesson plan prior to their use in the classroom. The district may at any time direct that a teacher discontinue use of a given application. The district will provide training on the relevant student privacy laws to staff members who are selecting and deploying applications in the classroom.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3051 Opioid Overdose Prevention and Response

The district will maintain an opioid antagonist in its schools, specifically naloxone, otherwise known by its brand name Narcan. Pursuant to Nebraska law and the Naloxone Standing Order issued by the Nebraska DHHS, Division of Public Health, the board will permit school nurses, trained school staff, or other individuals qualified by law to administer naloxone to any person at school or a school event displaying symptoms of an opioid overdose.

This policy shall not create a duty on the part of the school district and/or its personnel to administer naloxone. School representatives will not administer naloxone under the following circumstances:

- a. Naloxone is not available during the overdose emergency;
- b. There is no individual available who is qualified to administer naloxone; or
- c. School representatives are uncertain as to whether an opioid overdose is occurring.

Nothing in this policy is intended to regulate, restrict or otherwise deter a law enforcement officer, emergency medical technician, volunteer fire fighter, licensed medical professional or other authorized individual from administering his/her own supply of naloxone when responding in good faith to a suspected drug overdose occurring on school district property or at a school-sponsored event.

Procurement and Storage. The superintendent, in consultation with the school's nursing staff, will make the necessary arrangements to obtain naloxone. The naloxone will be stored unlocked in the nurses' office(s). The superintendent, in consultation with the school's nursing staff, will reorder naloxone.

Naloxone that is nearing its expiration date will be replaced. The school nurse shall maintain a log of naloxone supplies consistent with the district's practices for logging other medications.

Training. Licensed health care professionals and school resource officers employed on the high school and middle school levels shall all complete an approved naloxone training prior to carrying and/or administering naloxone. Other school staff members may be trained as determined by the administration. Once trained, staff members shall

review the DHHS standing order and applicable naloxone administration protocols as needed.

Recordkeeping and Reporting. Any individual who administers naloxone on behalf of the school district will promptly notify the building principal and superintendent of the facts and circumstances surrounding the drug overdose incident. The administration of naloxone to any student will be documented in his/her cumulative health record. The administration of naloxone to any staff member will be documented in his/her personnel file.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3052
Leasing Personal Property

I. Leases of Personal Property by the District

A. Applicability of this policy.

Leases of personal property using any federal funds, whether those funds are derived directly from the federal government (e.g. award of a federal grant) or are derived by pass-through awards from the Nebraska Department of Education (e.g. special education funds, school lunch funds, Title I funds) are subject to the policy on Purchasing and Procurement with Federal Funds, which is found elsewhere in this section.

This policy applies to all other leases of personal property made by the school district other than construction, remodeling, repair and site improvements.

B. General Leasing Policy

1. The school district's budget shall be the guide for all leases of personal property. Any leases of personal property must be approved by the board or superintendent.
2. The board intends to lease competitively, whenever possible, without prejudice and to seek maximum educational value for every dollar expended.
3. The leasing of equipment and other goods shall be centralized in the administration office under the supervision of the superintendent of schools, who shall be responsible for developing and administering the leasing program of the school district.
4. Leases of personal property or commitments of district funds that are not authorized by this policy will be the responsibility of the person making the commitment.
5. No board member, employee, volunteer, parent-teacher organization, or other individual or entity may use a school district account, its tax identification number, or its tax exemption to make personal leases of any kind or for any reason.

C. Leasing Procedures

1. School personnel must secure the approval of the board or superintendent before entering into a lease for personal property.
2. For lease of more than \$_____, the district will secure written quotes and/or estimates from a reasonable number of vendors. The district will lease from a responsible vendor with the lowest price unless the board approves the lease from the more expensive vendor.

D. Relations with Vendors

1. The board wishes to maintain good working relations with vendors who lease equipment, goods, and other personal property to the school system. The school shall not extend favoritism to any vendors. Each lease shall be entered into on the basis of quality, price and delivery, with past experiences being a factor if all other considerations are equal.
2. No lease shall be made that violates any conflict of interest policy or law.
3. The board believes in patronizing local businesses. Consequently, when proposals are judged to be equal in terms of quality, price, and/or service, the lease will be awarded to the firm that is located within the district. However, the board will not sacrifice either quality or economy to patronize local businesses.

II. Lease of District-Owned Personal Property to Others

A. Personal Property Valued at No More Than \$_____

If the Superintendent determines that any personal property that is owned by the school district and has a fair market value of no more than \$_____ is not needed for school district use, the Superintendent may enter into a lease agreement for a period no longer than the period of time during which such property is not needed for school purposes and in no event longer than _____ days. The Superintendent is authorized to determine the terms and conditions of the lease of this district-owned personal property,

provided however that Superintendent will avoid leasing such personal property at a rate that is significantly lower than the fair market value for comparable rentals of similar personal property. At Superintendent's discretion, Superintendent may require lessors of this district-owned personal property to furnish property and liability insurance covering lessors use of such property.

B. Personal Property Valued in Excess of \$ _____

If the board of education determines that any personal property that is owned by the school district and has a fair market value of at least \$ _____ is not needed for school district use, the board may lease such property, or portion thereof, upon such terms and conditions as it determines.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3053 Nondiscrimination

The School District does not discriminate on the basis of prohibited factors in employment and educational programs/activities. The School District affirmatively strives to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin

Title VII of the Civil Rights Act of 1964 as amended - prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of sex

Age Discrimination in Employment Act of 1967 (ADEA) as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40

The Equal Pay Act of 1963 as amended - prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions

The Uniformed Services Employment and Reemployment Rights Act (USERRA) - provides job protections and reemployment rights to military reservists and National Guard members called to active duty

The Boy Scouts of America Equal Access Act which prohibits discrimination against groups that wish to access district facilities

The Nebraska Fair Employment Practice Act (FEPA) – prohibits employment discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), disability, marital status, and retaliation

Nebraska Age Discrimination in Employment Act (Age Act) – prohibits employment discrimination on the basis of age for those individuals who are over 40 years of age

The Equal Pay Act of Nebraska – prohibits discriminatory wage practices based on sex

The Nebraska Equal Opportunity in Education Act – prohibits discrimination on the basis of sex (including pregnancy) by any educational institution

Veterans Preference Law (NEB. REV. STAT §§ 48-225 to 48-231) - stipulates categorical preferences for employment for military veterans and for the spouses of disabled veterans

Additional School Board policies prohibit harassment and/or discrimination against students, employees, or patrons on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, age, pregnancy, and any other legally prohibited basis. Retaliation for engaging in a protected activity is also prohibited.

Any person who believes she or he has been discriminated against, denied a benefit, or excluded from participation in any district education program or activity may file a complaint using the district’s complaint procedures.

Inquiries regarding compliance with any of the laws referred to in this policy may be directed to the superintendent or to the district’s Title IX and/or Section 504/ADA Coordinator.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3054
Law Enforcement Unit

The board is committed to providing a safe environment conducive to learning for members of the school community. In furtherance of this commitment, the board designates Lyons Police Department to act as the district's Law Enforcement Unit.

Authority of the Law Enforcement Unit. The law enforcement unit is officially authorized to:

- Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against; *and*
- Maintain the physical security and safety of the district

In maintaining the physical security and safety of the district, the law enforcement unit may employ surveillance or other safety or security equipment in compliance with state and federal law. The law enforcement unit is responsible for the maintenance and security of any such equipment.

Records of the Law Enforcement Unit. All records created and maintained by the law enforcement unit for a law enforcement purpose are considered law enforcement unit records. This would include any records produced by surveillance or other safety or security equipment employed by the law enforcement unit to maintain the physical security and safety of the district.

Law enforcement unit records must be maintained by the law enforcement unit until the unit determines the records may be destroyed. The law enforcement unit is responsible for maintaining law enforcement unit records separate and apart from the student records maintained by the district pursuant to the board's policy regarding student records.

Law enforcement unit records may only be disclosed with the authorization of the Superintendent or his/her designee. Only copies of law enforcement unit records may be disclosed, and the original must be retained by the law enforcement unit and will continue to be considered a law enforcement unit record.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3055 School Resource Officers

The school district must have in effect a memorandum of understanding (MOU) with any law enforcement agency or any security agency prior to using the services of a school resource officer (SRO) or security guard. The MOU shall comply with all state law requirements.

Employer. The SRO or security guard are employees of the law enforcement agency or security agency.

Required Training. Each SRO and security guard and at least one administrator in each elementary or secondary school where an SRO or security guard is assigned must attend a minimum of twenty hours of training focused on school-based law enforcement, including, but not limited to, coursework focused on school law, student rights, understanding special needs students and students with disabilities, conflict de-escalation techniques, ethics for school resource officers and security guards, teenage brain development, adolescent behavior, implicit bias training, diversity and cultural awareness, trauma-informed responses, and preventing violence in school settings.

Prosecution Referral Records. The district must create and maintain records on each student referral for prosecution from an SRO in response to an incident occurring at school, on school grounds, or at a school-sponsored event. The records must allow for analysis of related data and must include the reason for the referral and the federally identified demographic characteristics of each student.

Parent or Guardian Notification. School officials are not required to notify a parent or guardian or give them an opportunity to be present if the student is subjected to questioning or interrogation by a school official. School officials will notify a parent or guardian or give them an opportunity to be present if the student is subjected to questioning or interrogation by an SRO or security guard operating in conjunction with a school official as provided in the school's separate policy regarding investigations, arrests, and other student contact by law enforcement, Health and Human Services, or other child welfare agencies.

Rights Advisement. School officials will not advise students of any constitutional rights before student questioning or interrogation. The advisement, if any, shall be made by the SRO or security guard as provided by their agencies' policies and procedures.

Referral to Law Enforcement for Prosecution. The school district's student discipline policy is the school policy required by state law that addresses the student conduct or actions that will be referred to law enforcement for prosecution and the type of student conduct or actions that will be resolved as a disciplinary matter by a school official and not referred to law enforcement.

Restraint and Seclusion. The school district's restraint and seclusion policy applies to the use of restraint and seclusion on students by school district employees. SROs and security guards that are not employees of the school district are not governed by the school district's restraint and seclusion policy. Instead, they will be governed by the restraint and seclusion policies, practices, and procedures implemented by their employers.

Filing and Posting the MOU. The superintendent shall provide a copy of any initial MOU entered into under this policy to the Nebraska Department of Education (Department) or post a copy on the school district's website within three months of its adoption. The superintendent shall thereafter file any changes to the MOU with the Department or post it on the school district's website no later than January 1st of each year.

Complaint Process. Any student or parent who wishes to express a concern or file a complaint about an SRO or security guard and the practices of the SRO or security guard must follow the school district's complaint procedure.

Adopted on: July 11, 2022

Revised on: _____

Reviewed on: _____

3056 Guest Speakers

The school board recognizes that guest speakers with demonstrated expertise in areas of interest to the school district and its students may enrich the students' educational experiences. The school district has adopted this policy to ensure that the messages provided by outside speakers do not conflict with school district policies, the fundamental values of a public school education, or the legal limitations placed on public school districts. Individuals who wish to invite a guest speaker must follow the procedures outlined below.

Classroom or School-Sponsored Activity Guest Speakers. Teachers or activity sponsors who desire to invite a guest speaker to address his or her class or activity members must:

1. Research the guest speaker, have a clear understanding of the guest speaker's purpose and message, and determine that the speaker's message complies with the school district's policies and fundamental values.
2. Complete a Guest Speaker Request Form and submit it to the building principal at least 14 days prior to the proposed appearance.
3. Notify the main office of name, time, and date of the guest speaker's appearance (if the request is approved).
4. Notify parents of the name, time, date, and topic and summary of the presentation at least 7 days before the presentation (if the request is approved).
5. Require the guest speaker to submit a copy of any visual or written materials to the employee at least 24 hours prior to any presentation. The employee shall submit the materials to the principal upon receipt.
6. Prepare students in advance for the experience.
7. Inform the guest speaker that students or employees may ask challenging questions or offer differing viewpoints.
8. Terminate the presentation if the speaker fails to limit his or her remarks to the subject on which he or she has been invited to speak.
9. Remain with the speaker and students to facilitate and monitor the discussion.

10. Provide appropriate follow-up activities and education.

Assembly Speakers. Employees who desire to invite a guest speaker to address staff or students at an assembly must follow the identical procedures outlined above. In addition, the employee must submit the Guest Speaker Request Form to the superintendent at least 14 days prior to the proposed appearance and the speaker submitted materials upon receipt.

Request Consideration. The administrator(s) must research the guest speaker and determine that the speaker's message complies with the school district's policies and fundamental values. If it does not comply, the administrator will reject the request. If it does comply, the administrator shall then consider the following factors when approving or denying the request:

1. The guest speaker's ability to appropriately and adequately address the topic with the students based upon the speaker's education, training, expertise, or other qualifications.
2. The materials submitted by the guest speaker.
3. The educational value to students of the presentation.
4. The relevance of the presentation to the class, activity, or school's educational mission.
5. Whether the topic of the presentation is appropriate for the students' ages and level of maturity.
6. Whether the speaker has a history of providing factual information in a fair and balanced manner or if he or she has previously advocated for a particular position or espoused personal opinion, bias, or partisanship.
7. Whether the speaker's proposed presentation is consistent with the fundamental values of a public school education and/or encourages the fundamental values, habits, or manners of civility.
8. Whether the speaker's proposed presentation will satisfy the Nebraska Department of Education's accreditation, curriculum, or standards requirements or recommendations.

The administrator shall notify the employee of his or her decision.

Controversial Issues. If the employee or administrator determine that the guest speaker's topic or presentation is partisan or controversial but will still be of benefit to the students, (1) the employee and administrator will work

with the guest speaker to develop a plan that will allow the issue to be presented in an objective and unbiased manner and/or (2) the employee and administrator will develop a plan that will allow opposing viewpoints to be presented. The employee will notify students and their parents at least 7 days in advance of the nature of the presentation. If a student does not wish to attend a controversial presentation, the employee will either excuse the student from attending or provide an alternative assignment.

Other Requirements. The inviting employee or appropriate administrator may interrupt or stop the presentation if it violates this or any other school policy.

Adopted on: July 11, 2022

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3057 Title IX Policy

It is the policy of the school district that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any of the school district's programs or activities. The district is required by Title IX (20 U.S.C. § 1681) and 34 C.F.R. part 106 to not discriminate in such a manner.

1. Title IX Coordinator

1.1. **Designation.** The district will designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this policy, who will be referred to as the "**Title IX Coordinator.**" The district will notify applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district, of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). This report may be made by any means, including but not limited to, in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours).

2. Definitions. As used in this policy, the following terms are defined as follows:

2.1. **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to any district employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only district employee with actual knowledge is the respondent (as that term is defined below). "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in subsection 1.1 above.

2.2. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

2.3. **Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment. The only district official who is authorized to initiate the Grievance Process for Formal Complaints of Sexual Harassment against a respondent is the Title IX Coordinator (by signing a formal complaint). At the time of filing a formal complaint with the district, a complainant must be participating in or attempting to participate in the district's education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under subsection 1.1 above, and by any additional method designated by the district. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the district) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy or under 34 C.F.R. part 106, and will comply with the requirements of this policy and 34 C.F.R. part 106, including subsections 5.1.3–5.1.4 and 34 C.F.R. § 106.45(b)(1)(iii).

2.4. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

2.5. **Consent** for purposes of this policy means the willingness in fact for conduct to occur. An individual may, as a result of age, incapacity, disability, lack of information, or other circumstances be incapable of providing consent to some or all sexual conduct or activity. Neither verbal nor physical resistance is required to establish that an individual did not consent. District officials will consider the totality of the circumstances in determining whether there was consent for any specific conduct. Consent may be revoked or withdrawn at any time.

2.6. **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- 2.6.1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
- 2.6.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it

effectively denies a person equal access to the district's education program or activity;

2.6.3. **Sexual assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), which means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:

2.6.3.1. **Sex Offenses, Forcible**—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

2.6.3.1.1. **Rape**—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

2.6.3.1.2. **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

2.6.3.1.3. **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

2.6.3.1.4. **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

- 2.6.3.2. **Sex Offenses, Non-forcible**—(Except Prostitution Offenses) Unlawful, non-forcible sexual intercourse.
 - 2.6.3.2.1. **Incest**—Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
 - 2.6.3.2.2. **Statutory Rape**—Non-Forcible sexual intercourse with a person who is under the statutory age of consent
- 2.6.4. **Dating violence**, as defined in 34 U.S.C. § 12291(a)(10), which means violence committed by a person—
 - 2.6.4.1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - 2.6.4.2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - 2.6.4.2.1. The length of the relationship.
 - 2.6.4.2.2. The type of relationship.
 - 2.6.4.2.3. The frequency of interaction between the persons involved in the relationship.
- 2.6.5. **Domestic violence**, as defined in 34 U.S.C. § 12291(a)(8), which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

2.6.6. **Stalking**, as defined in 34 U.S.C. § 12291(a)(30), which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

2.6.6.1. fear for his or her safety or the safety of others; or

2.6.6.2. suffer substantial emotional distress.

2.7. **Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The district will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

3. Discrimination Not Involving Sexual Harassment.

3.1. **General Prohibition.** Except as provided elsewhere in Title IX, 34 C.F.R. part 106, or this policy, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the district.

3.2. **Specific Prohibitions.** Except as provided elsewhere in Title IX, 34 C.F.R. part 106, or this policy, in providing any aid, benefit, or service to a student, the district will not on the basis of sex:

- 3.2.1. Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- 3.2.2. Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- 3.2.3. Deny any person any such aid, benefit, or service;
- 3.2.4. Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- 3.2.5. Apply any rule concerning the domicile or residence of a student or applicant;
- 3.2.6. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
- 3.2.7. Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

3.3. Complaint Procedure. All complaints regarding any alleged discrimination on the basis of sex, including without limitation violations of this policy, 34 C.F.R. part 106, Title IX, Title VII, or other state or federal law—when the alleged discrimination does not arise from or relate to an allegation of sexual harassment as defined in subsection 2.6 above—shall be addressed pursuant to the district’s general complaint procedure, Board Policy 2006.

4. Response to Sexual Harassment

4.1. Reporting Sexual Harassment. Any person who witnesses an act of unlawful sexual harassment is encouraged to report it to the District’s Title IX Coordinator. No person will be retaliated against based on any report of suspected sexual harassment or retaliation. Any District employee who receives a report of sexual harassment or has actual knowledge of sexual harassment must convey that information to the Title IX Coordinator as soon as reasonably practicable, but in no case later than the end of the following school day.

4.2. General Response to Sexual Harassment. When the district has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the district will respond promptly in a manner that is not deliberately indifferent. The district will be deemed to be deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this policy “education program or activity” includes locations, events, or circumstances over which the district exercised substantial control over both the respondent and the context in which the sexual harassment occurs. The district’s response will treat complainants and respondents equitably by offering supportive measures as defined in subsection 2.7 above to a complainant, and by following the grievance process described in section 5 below before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

4.3. Emergency Removal. Nothing in this policy precludes the district from removing a respondent from the district’s education program or activity on an emergency basis, provided that the district undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. In the event that the district so removes a respondent on an emergency basis, then the district will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

4.4. Administrative Leave. Nothing in this policy precludes the district from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with section 5 below. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

4.5. **General Response Not Conditioned on Formal Complaint.** With or without a formal complaint, the district will comply with the obligations and procedures described in this section 4.

5. **Grievance Process for Formal Complaints of Sexual Harassment.**

5.1. **General Requirements.**

- 5.1.1. **Equitable Treatment.** The district will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following the grievance process described in this section 5 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies will be designed to restore or preserve equal access to the district's education program or activity. Remedies may include the same individualized services described in subsection 2.7 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- 5.1.2. **Objective Evaluation.** This grievance process requires an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- 5.1.3. **Absence of Conflicts of Interest or Bias.** The district will require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- 5.1.4. **Training.** The district will ensure that all individuals or entities described in this Training section 5.1.4 receive training as provided below. Any materials used to train these individuals will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

- 5.1.4.1. **All District Employees and Board Members.** All district employees and board members will be trained on how to identify and report sexual harassment.
- 5.1.4.2. **Title IX Coordinators, Investigators, Decision-Makers, or Informal Resolution Facilitators.** The district will ensure that Title IX Coordinators, investigators, decision-makers, or any person designated by the district to facilitate an informal resolution process receive training on:
 - 5.1.4.2.1. The definition of sexual harassment in subsection 2.6;
 - 5.1.4.2.2. The scope of the district's education program or activity;
 - 5.1.4.2.3. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and
 - 5.1.4.2.4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 5.1.4.3. **Decision-Makers.** The district will ensure that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in subsection 5.6.
- 5.1.4.4. **Investigators.** The district will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in subsection 5.5.8.
- 5.1.5. **Presumption.** It is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

- 5.1.6. **Reasonably Prompt Time Frames.** This grievance process shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the district offers informal resolution processes. The process shall also allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- 5.1.7. **Range of Possible Sanctions and Remedies.** Following a determination of responsibility, the district may impose disciplinary sanctions and remedies in conformance with this and the district's student discipline policy, and other state and federal laws. Depending upon the circumstances, these policies provide for disciplinary sanctions and remedies up to and including expulsion.
- 5.1.8. **Range of Supportive Measures.** The range of supportive measures available to complainants and respondents include those listed in subsection 2.7.
- 5.1.9. **Respect for Privileged Information.** The district will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

5.2. **Notice of Allegations.**

- 5.2.1. **Initial Notice.** Upon receipt of a formal complaint, the district will provide the following written notice to the parties who are known:
- 5.2.1.1. A copy of this policy.
 - 5.2.1.2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in subsection 2.6, including sufficient details known at

the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under subsection 5.5.5, and may inspect and review evidence under subsection 5.5.5. The written notice will inform the parties of any provision in the district's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

- 5.2.2. **Supplemental Notice.** If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the Initial Notice described above, the district will provide notice of the additional allegations to the parties whose identities are known.

5.3. **Dismissal of Formal Complaint.**

- 5.3.1. The district will investigate the allegations in a formal complaint.
- 5.3.2. **Mandatory Dismissals.** The district **must** dismiss a formal complaint if the conduct alleged in the formal complaint:
- 5.3.2.1. Would not constitute sexual harassment as defined in subsection 2.6 even if proved;
 - 5.3.2.2. Did not occur in the district's education program or activity; or
 - 5.3.2.3. Did not occur against a person in the United States.

5.3.3. **Discretionary Dismissals.** The district **may** dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

5.3.3.1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

5.3.3.2. The respondent is no longer enrolled in or employed by the district; or

5.3.3.3. Specific circumstances prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

5.3.4. Upon a dismissal required or permitted pursuant to subsections 5.3.2 or 5.3.3 above, the district will promptly send written notice of the dismissal and an explanation of that action simultaneously to the parties.

5.3.5. Dismissal of a formal complaint under this policy does not preclude the district from taking action under another provision of the district's code of conduct or pursuant to another district policy.

5.4. **Consolidation of Formal Complaints.** The district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

5.5. **Investigation of Formal Complaint.** When investigating a formal complaint and throughout the grievance process, the district will:

5.5.1. Designate and authorize one or more persons (which need not be district employees) as investigator(s) to conduct the district's investigation of a formal complaint;

5.5.2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding

responsibility rest on the district and not on the parties provided that the district cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the district obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the district will obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

- 5.5.3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- 5.5.4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- 5.5.5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- 5.5.6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- 5.5.7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the district

does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the district will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report; and

- 5.5.8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar days prior to the time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

5.6. Exchange of Written Questions. After the district has sent the investigative report to the parties pursuant to subsection 5.5.8, but before reaching a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

5.7. Determination Regarding Responsibility

- 5.7.1. **Decision-Maker(s).** The decision-maker(s) cannot be the same person as the Title IX Coordinator or the investigator(s).
- 5.7.2. **Written Determination.** The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) will apply the

preponderance of the evidence standard. The written determination will include:

- 5.7.2.1. Identification of the allegations potentially constituting sexual harassment as defined in subsection 2.6;
- 5.7.2.2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 5.7.2.3. Findings of fact supporting the determination;
- 5.7.2.4. Conclusions regarding the application of the district's code of conduct to the facts;
- 5.7.2.5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant; and
- 5.7.2.6. The district's procedures and permissible bases for the complainant and respondent to appeal.

5.7.3. The district will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

5.7.4. The Title IX Coordinator is responsible for effective implementation of any remedies.

5.8. **Appeals.** The district will offer both parties the opportunity to appeal from a determination regarding responsibility, and from the

district's dismissal of a formal complaint or any allegations therein, on the grounds identified below.

5.8.1. **Time for Appeal.** Appeals may only be initiated by submitting a written Notice of Appeal to the Office of the Superintendent of Schools within ten (10) calendar days of the date of the respective written determination of responsibility or dismissal from which the appeal is taken. The Notice of Appeal must include (a) the name of the party or parties making the appeal, (b) the determination, dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from subsection 5.8.2 below) upon which the appeal is based. A party's failure to timely submit a Notice of Appeal will be deemed a waiver of the party's right to appeal under this policy, 34 C.F.R. part, 106, and Title IX.

5.8.2. **Grounds for Appeal.** Appeals from a determination regarding responsibility, and from the district's dismissal of a formal complaint or any allegations therein, are limited to the following grounds:

5.8.2.1. Procedural irregularity that affected the outcome of the matter;

5.8.2.2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

5.8.2.3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

5.8.3. As to all appeals, the district will:

5.8.3.1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

5.8.3.2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that

reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

5.8.3.3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in subsections 5.1.3–5.1.4.

5.8.3.4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

5.8.3.5. Issue a written decision describing the result of the appeal and the rationale for the result; and

5.8.3.6. Provide the written decision simultaneously to both parties.

5.9. Informal Resolution. The district will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, the district will not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the district may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the district:

5.9.1. Provides to the parties a written notice disclosing:

5.9.1.1. The allegations;

5.9.1.2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;

5.9.1.3. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and

- 5.9.1.4. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- 5.9.2. Obtains the parties' voluntary, written consent to the informal resolution process; and
- 5.9.3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

5.10. Recordkeeping.

- 5.10.1. The district will maintain for a period of seven years records of:
 - 5.10.1.1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the district's education program or activity;
 - 5.10.1.2. Any appeal and the result therefrom;
 - 5.10.1.3. Any informal resolution and the result therefrom; and
 - 5.10.1.4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The district will make these training materials publicly available on its website, or if the district does not maintain a website then the district will make these materials available upon request for inspection by members of the public.
- 5.10.2. For each response required under section 4, the district will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the district will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures

designed to restore or preserve equal access to the district's education program or activity. If the district does not provide a complainant with supportive measures, then the district will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the district in the future from providing additional explanations or detailing additional measures taken.

6. **Superintendent Authorized to Contract.** The board authorizes the Superintendent to contract for, designate, and appoint individuals to serve in the roles of the district's investigator(s), decision-maker(s), informal resolution facilitator(s), or appellate decision-maker(s) as contemplated by this policy.

7. **Access to Classes and Schools.**

7.1. **General Standard.** Except as provided in this section or otherwise in 34 C.F.R. part 106, the district will not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

7.1.1. **Contact sports in physical education classes.** This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

7.1.2. **Ability grouping in physical education classes.** This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

7.1.3. **Human sexuality classes.** Classes or portions of classes that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

7.1.4. **Choruses.** The district may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

7.2. **Classes and Extracurricular Activities.** The district may provide nonvocational single-sex classes or extracurricular activities as permitted by 34 C.F.R. part 106.

8. **Athletics.** It is the policy of the district that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club, or intramural athletics offered by the district, and that the district will not provide any such athletics separately on such basis.

8.1. **Separate Teams.** Notwithstanding the foregoing paragraph, the district may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

8.2. **Equal opportunity.** The district will provide equal athletic opportunity for members of both sexes. Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams will not constitute noncompliance with this section.

9. **Certain Different Treatment on the Basis of Sex Permitted.** Nothing herein shall be construed to prohibit the district from treating persons differently on the basis of sex as permitted by Title IX or 34 C.F.R. part 106. For example, and without limiting the foregoing, the district may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

10. **Retaliation Prohibited.** Neither the district nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 C.F.R. part 106, or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. The district will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. § 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial

proceeding arising thereunder. Complaints alleging retaliation may be filed according to shall be addressed pursuant to Board Policy 2006 (Complaint Procedure).

10.1. **Specific Circumstances.**

10.1.1. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this section.

10.1.2. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

11. **Notification of Policy.** The district will notify applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the existence of this policy. The requirement to not discriminate, as stated in Title IX and 34 C.F.R. part 106, in the district's education program(s) or activities extends to admission and employment, and inquiries about the application of Title IX and 34 C.F.R. part 106 to the district may be referred to the district's Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

12. **Publication of Policy.** The district will prominently display on its website, if any, and in each handbook that it makes available to applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district, the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).

13. **Application Outside the United States.** The requirements of this policy apply only to sex discrimination occurring against a person in the United States.

14. **Scope of Policy.** Nothing herein shall be construed to be more demanding or more constraining upon the district than the requirements of Title IX (20 U.S.C. § 1681) and 34 C.F.R. part 106. To the extent that the district is in compliance with Title IX and 34 C.F.R. part 106, then all of the

district's obligations under this policy shall be deemed to be fulfilled and discharged.

3058

Naming School Facilities and Property

The purpose of this policy is to establish the criteria and procedures for naming and renaming school district facilities or property.

Authority. The board shall have the authority to name all school district facilities or property. The board reserves the right to refuse to name any facility or piece of property and to make name changes at any time.

Definition. “Facilities or property” means any physical structure owned by the school, including any new, existing, or leased building; a wing of a building; any room; or other significant features or portion thereof such as a fountain, monument, plaza, garden, landscaped area, street, running course, running track, playing field, practice field, playing court, practice court, bench, memorial, or stage.

Committee or Administrative Review. Prior to formal naming action by the board, the matter may be referred to the superintendent or a school committee for consideration, review, and recommendation to the board.

Naming Criteria. The district may name facilities or property after the community, subdivision, or street on which the school is located; the geographic location of the school; or any significant landmark. The district may name facilities or property for an individual, family, or entity meeting at least one of the following criteria:

1. A faculty member, staff member, board member, alumni, volunteer, or other community member who has made an outstanding contribution to education, humanity, or community; or have displayed outstanding leadership; or be a person of historical significance; and who has been deceased for at least five years;
2. Financial donors who make a significant financial contribution to the school generally or to a specific school activity or program; and
3. Financial donors who make a significant financial contribution toward the construction of a new facility/property or facility/property renovation.

The district will not grant a naming right without the informed consent of the named party or his/her/its authorized representative.

Due Diligence Review. The board or its designee shall conduct a due diligence review of any proposed facility or property name to consider whether it is and will continue to be a positive and appropriate reflection on the school,

whether the name conforms with the purpose and mission of the school, and whether there are any conflict of interest issues. The board or its designee shall also consult with district legal counsel to ensure that any proposed name complies with applicable policies, laws, and regulations and to determine if any proposed name would have an adverse impact on existing or future tax-exempt bond issues.

Renaming Facilities. Once established, the name of school district facilities or property generally shall not be changed absent compelling reason to do so as determined by the board. Compelling reasons include, but are not limited to, the person or entity or any of its officers, agents, or employees committing any act or doing anything which might tend to bring the person or entity or any of its officers, agents, or employees into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably on the district or if the continued use of the name is contrary to the educational mission of the district. The named party may, without refund of any consideration paid or provided, terminate his/her/its acceptance of the naming rights prior to the scheduled termination date upon request to and approval of the board. If the request is granted, the named party shall be solely responsible for all costs of removal of the names.

Current Facilities or Property. Facility and property names that exist at the time this policy is adopted shall remain in effect, subject to future renaming consistent with this policy.

Adopted on: July 11, 2022
Revised on: _____
Reviewed on: _____

Reproduction of Copyrighted Works by Educators and Librarians

Many educators and librarians ask about the fair use and photocopying provisions of the copyright law. The Copyright Office cannot give legal advice or offer opinions on what is permitted or prohibited. However, we have published in this circular basic information on some of the most important legislative provisions and other documents dealing with reproduction by librarians and educators.

Also available is the 1983 Report of the Register of Copyrights on Library Reproduction of Copyrighted Works (17 U.S.C. 108). The Report, seven appendices, and other related materials can be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5301 Shawnee Rd., Alexandria, VA 22312. Go to the NTIS website at www.ntis.gov. For further information, call NTIS at 1-800-553-6847 or (703) 605-6000.

The 1988 five-year Report of the Register of Copyrights on Library Reproduction of Copyrighted Works is also available from NTIS.

A. Introductory Note

The Subjects Covered in This Booklet

The documentary materials collected in this circular deal with reproduction of copyrighted works by educators, librarians, and archivists for a variety of uses, including:

- Reproduction for teaching in educational institutions at all levels and
- Reproduction by libraries and archives for purposes of study, research, interlibrary exchanges, and archival preservation.

The documents reprinted here are limited to materials dealing with reproduction. Under the copyright law, reproduction can take either of two forms:

- The making of *copies*: by photocopying, making microform reproductions, videotaping, or any other method of duplicating visually-perceptible material and
- The making of *phonorecords*: by duplicating sound recordings, taping off the air, or any other method of recapturing sounds.

The copyright law also contains various provisions dealing with importations, performances, and displays of copyrighted works for educational and other noncommercial purposes, but they are outside the scope of this circular. You can view and download the statute from the Copyright Office website at

www.loc.gov. To purchase a copy, go to *http://bookstore.gpo.gov* and search for Circular 92. For information about specific provisions, write to:

Library of Congress
Copyright Office-COPUBS
101 Independence Avenue SE
Washington, DC 20559-6304

A Note on the Documents Reprinted

The documentary materials in this booklet are reprints or excerpts from six sources:

- 1 **The Copyright Act of October 19, 1976.** This is the copyright law of the United States, effective January 1, 1978 (title 17 of the *United States Code*, Public Law 94-553, 90 Stat. 2541).
 - 2 **The Senate Report.** This is the 1975 report of the Senate Judiciary Committee on S. 22, the Senate version of the bill that became the Copyright Act of 1976 (S. Rep. No. 94-473, 94th Cong., 1st Sess., November 20 (legislative day November 18, 1975)).
 - 3 **The House Report.** This is the 1976 report of the House of Representatives Judiciary Committee on the House amendments to the bill that became the Copyright Act of 1976 (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., September 3, 1976).
 - 4 **The Conference Report.** This is the 1976 report of the “committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 22) for the general revision of the Copyright Law” (H.R. Rep. No. 94-1733, 94th Cong., 2d Sess., September 29, 1976).
 - 5 **The Congressional Debates.** This booklet contains excerpts from the *Congressional Record* of September 22, 1976, reflecting statements on the floor of Congress at the time the bill was passed by the House of Representatives (122 *Cong. Rec.* H 10874-76, daily edition, September 22, 1976).
 - 6 **Copyright Office Regulations.** These are regulations issued by the Copyright Office under section 108 dealing with warnings of copyright for use by libraries and archives (37 *Code of Federal Regulations* §201.14).
- Items 2 and 3 on this list—the 1975 Senate Report and the 1976 House Report—present special problems. On many points the language of these two reports is identical or closely similar. However, the two reports were written at different times, by committees of different Houses of Congress, on

somewhat different bills. As a result, the discussions on some provisions of the bills vary widely, and on certain points they disagree.

The disagreements between the Senate and House versions of the bill itself were resolved when the Act of 1976 was finally passed. However, many of the disagreements as to matters of interpretation between statements in the 1975 Senate Report and in the 1976 House Report were left partly or wholly unresolved. It is therefore difficult in compiling a booklet such as this to decide in some cases what to include and what to leave out.

The House Report was written later than the Senate Report, and in many cases it adopted the language of the Senate Report, updating it and conforming it to the version of the bill that was finally enacted into law. Thus, where the differences between the two Reports are relatively minor, or where the discussion in the House Report appears to have superseded the discussion of the same point in the Senate Report, we have used the House Report as the source of our documentation. In other cases we have included excerpts from both discussions in an effort to present the legislative history as fully and fairly as possible. Anyone making a thorough study of the Act of 1976 as it affects librarians and educators should not rely exclusively on the excerpts reprinted here but should go back to the primary documentary sources.

B. Exclusive Rights in Copyrighted Works

1. Text of Section 106

NOTE: The following is a reprint of the entire text of section 106 of title 17, *United States Code*, as amended in 1995 and 2002.

§ 106 · Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and

other audiovisual works, to perform the copyrighted work publicly;

- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

2. Excerpts from House Report on Section 106

NOTE: The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 61–62). The text of the corresponding Senate Report (S. Rep. No. 94-473, pages 57–58) is substantially the same.

Section 106. Exclusive Rights in Copyrighted Works

General scope of copyright

The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106. These exclusive rights, which comprise the so-called “bundle of rights” that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201, each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner’s exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 is made “subject to sections 107 through 118,” and must be read in conjunction with those provisions.

Rights of reproduction, adaptation, and publication

The first three clauses of section 106, which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights

at once, as where a publisher reproduces, adapts, and sells copies of a person’s copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated: where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to “copies or phonorecords,” although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. §1).

Reproduction.—Read together with the relevant definitions in section 101, the right “to reproduce the copyrighted work in copies or phonorecords” means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed form from which it can be “perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author’s “expression” rather than merely the author’s “ideas” are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114.

“Reproduction” under clause (1) of section 106 is to be distinguished from “display” under clause (5). For a work to be “reproduced,” its fixation in tangible form must be “sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

C. Fair Use

1. Text of Section 107

NOTE: The following is a reprint of the entire text of section 107 of title 17, *United States Code* as amended in 1990 and 1992.

§ 107 · Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use

made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

2. Excerpts from House Report on Section 107

NOTE: The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 65–74). The discussion of section 107 appears at pages 61–67 of the Senate Report (S. Rep. No. 94-473). The text of this section of the Senate Report is not reprinted in this booklet, but similarities and differences between the House and Senate Reports on particular points will be noted below.

a. House Report: Introductory Discussion on Section 107

NOTE: The first two paragraphs in this portion of the House Report are closely similar to the Senate Report. The remainder of the passage differs substantially in the two Reports.

Section 107. Fair Use

General background of the problem

The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism

for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. These criteria have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

These criteria are relevant in determining whether the basic doctrine of fair use, as stated in the first sentence of section 107, applies in a particular case: "Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

The specific wording of section 107 as it now stands is the result of a process of accretion, resulting from the long controversy over the related problems of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. For example, the reference to fair use "by reproduction in copies or phonorecords or by any other means" is mainly intended to make clear that the doctrine has as much application to photocopying and taping as to older forms of use; it is not intended to give these kinds of reproduction any special status under the fair use provision or to sanction any reproduction beyond the normal and reasonable limits of fair use.

Similarly, the newly-added reference to “multiple copies for classroom use” is a recognition that, under the proper circumstances of fairness, the doctrine can be applied to reproductions of multiple copies for the members of a class.

The Committee has amended the first of the criteria to be considered — “the purpose and character of the use” — to state explicitly that this factor includes a consideration of “whether such use is of a commercial nature or is for non-profit educational purposes.” This amendment is not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works. It is an express recognition that, as under the present law, the commercial or non-profit character of an activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions.

General intention behind the provision

The statement of the fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless variety of situations and combinations of circumstances that can rise in particular cases precludes the formulation of exact rules in the statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

b. House Report: Statement of Intention as to Classroom Reproduction

NOTE: The House Report differs substantially from the Senate Report on this point.

(i) Introductory Statement

Intention as to classroom reproduction

Although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of section 107 has centered around questions of classroom reproduction, particularly photocopying. The arguments on the question are summarized at pp. 30–31 of this Committee’s 1967 report (H.R. Rep. No. 83, 90th Cong., 1st Sess.), and have not changed materially in the intervening years.

The Committee also adheres to its earlier conclusion, that “a specific exemption freeing certain reproductions of copyrighted works for educational and scholarly purposes from copyright control is not justified.” At the same time the Committee recognizes, as it did in 1967, that there is a “need for greater certainty and protection for teachers.” In an effort to meet this need the Committee has not only adopted further amendments to section 107, but has also amended section 504(c) to provide innocent teachers and other non-profit users of copyrighted material with broad insulation against unwarranted liability for infringement. The latter amendments are discussed below in connection with Chapter 5 of the bill.

In 1967 the Committee also sought to approach this problem by including, in its report, a very thorough discussion of “the considerations lying behind the four criteria listed in the amended section 107, in the context of typical classroom situations arising today.” This discussion appeared on pp. 32–35 of the 1967 report, and with some changes has been retained in the Senate report on S. 22 (S. Rep. No. 94-473, pp. 63–65). The Committee has reviewed this discussion, and considers that it still has value as an analysis of various aspects of the problem.

At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The response to these suggestions was positive, and a number of meetings of three groups, dealing respectively with classroom, reproduction of printed material, music, and audio-visual material, were held beginning in September 1975.

(ii) Guidelines with Respect to Books and Periodicals

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22, and that as part of that tentative agreement each side would accept the amendments to Sections 107 and 504 which were adopted by your Subcommittee on March 3, 1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107, but we have since been advised by committee staff that this will not be necessary.

As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows:

Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with respect to books and periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

Guidelines

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A A chapter from a book
- B An article from a periodical or newspaper
- C A short story, short essay or short poem, whether or not from a collective work
- D A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

- A The copying meets the tests of brevity and spontaneity as defined below and,
- B Meets the cumulative effect test as defined below and,
- C Each copy includes a notice of copyright

Definitions

Brevity

- i Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- ii Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.
[Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]
- iii Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- iv “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than ten percent of the words found in the text thereof, may be reproduced.

Spontaneity

- i The copying is at the instance and inspiration of the individual teacher, and
- ii The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- i The copying of the material is for only one course in the school in which the copies are made.
- ii Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- iii There shall not be more than nine instances of such multiple copying for one course during one class term.
[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

- A Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- B There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C Copying shall not:
 - a substitute for the purchase of books, publishers’ reprints or periodicals;
 - b be directed by higher authority;
 - c be repeated with respect to the same item by the same teacher from term to term.
- D No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976.

Ad Hoc Committee on Copyright Law Revision:

By Sheldon Elliott Steinbach.

Author-Publisher Group:

Authors League of America:

By Irwin Karp, Counsel.

Association of American Publishers, Inc.:

By Alexander C. Hoffman,

Chairman, Copyright Committee.

(iii) Guidelines with Respect to Music

In a joint letter dated April 30, 1976, representatives of the Music Publishers’ Association of the United States, Inc., the National Music Publishers’ Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill.

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

Guidelines for Educational Uses of Music

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A Permissible Uses

- 1 Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
- 2 For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section¹, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.²
- 3 Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
- 4 A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
- 5 A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B Prohibitions

- 1 Copying to create or replace or substitute for anthologies, compilations or collective works.
- 2 Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
- 3 Copying for the purpose of performance, except as in A(1) above.
- 4 Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
- 5 Copying without inclusion of the copyright notice which appears on the printed copy.

(iv) Discussion of Guidelines

The Committee appreciates and commends the efforts and the cooperative and reasonable spirit of the parties who achieved the agreed guidelines on books and periodicals and on music. Representatives of the American Association of University Professors and of the Association of American Law Schools have written to the Committee strongly criticizing the guidelines, particularly with respect to multiple copying, as being too restrictive with respect to classroom situations at the university and graduate level. However, the Committee notes that the Ad Hoc group did include representatives of higher education, that the stated “purpose of the ... guidelines is to state the minimum and not the maximum standards of educational fair use” and that the agreement acknowledges “there may be instances in which copying which does not fall within the guidelines ... may nonetheless be permitted under the criteria of fair use.”

The Committee believes the guidelines are a reasonable interpretation of the minimum standards of fair use. Teachers will know that copying within the guidelines is fair use. Thus, the guidelines serve the purpose of fulfilling the need for greater certainty and protection for teachers. The Committee expresses the hope that if there are areas where standards other than these guidelines may be appropriate, the parties will continue their efforts to provide additional specific guidelines in the same spirit of good will and give and take that has marked the discussion of this subject in recent months.

c. House Report: Additional Excerpts

NOTE: Under the heading “Reproduction and uses for other purposes,” the House Report, at pages 72–74, parallels much of the material appearing at pages 65–67 of the Senate Report under the same heading, but with some differences.

The concentrated attention given the fair use provision in the context of classroom teaching activities should not obscure its application in other areas. It must be emphasized again that the same general standards of fair use are applicable to all kinds of uses of copyrighted material, although the relative weight to be given them will differ from case to case.

A problem of particular urgency is that of preserving for posterity prints of motion pictures made before 1942. Aside from the deplorable fact that in a great many cases the only existing copy of a film has been deliberately destroyed, those

that remain are in immediate danger of disintegration; they were printed on film stock with a nitrate base that will inevitably decompose in time. The efforts of the Library of Congress, the American Film Institute, and other organizations to rescue and preserve this irreplaceable contribution to our cultural life are to be applauded, and the making of duplicate copies for purposes of archival preservation certainly falls within the scope of “fair use.”

During the consideration of the revision bill in the 94th Congress it was proposed that independent newsletters, as distinguished from house organs and publicity or advertising publications, be given separate treatment. It is argued that newsletters are particularly vulnerable to mass photocopying, and that most newsletters have fairly modest circulations. Whether the copying of portions of a newsletter is an act of infringement or a fair use will necessarily turn on the facts of the individual case. However, as a general principle, it seems clear that the scope of the fair use doctrine should be considerably narrower in the case of newsletters than in that of either mass-circulation periodicals or scientific journals. The commercial nature of the user is a significant factor in such cases: Copying by a profit-making user of even a small portion of a newsletter may have a significant impact on the commercial market for the work.

The Committee has examined the use of excerpts from copyrighted works in the art work of calligraphers. The committee believes that a single copy reproduction of an excerpt from a copyrighted work by a calligrapher for a single client does not represent an infringement of copyright. Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher or teacher in a learning situation would be a fair use of the copyrighted work.

The Register of Copyrights has recommended that the committee report describe the relationship between this section and the provisions of section 108 relating to reproduction by libraries and archives. The doctrine of fair use applies to library photocopying, and nothing contained in section 108 “in any way affects the right of fair use.” No provision of section 108 is intended to take away any rights existing under the fair use doctrine. To the contrary, section 108 authorizes certain photocopying practices which may not qualify as a fair use.

The criteria of fair use are necessarily set forth in general terms. In the application of the criteria of fair use to specific photocopying practices of libraries, it is the intent of this legislation to provide an appropriate balancing of the rights of creators, and the needs of users.

3. Excerpts from Conference Report on Section 107

NOTE: The following excerpt is reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, page 70).

Fair Use

Senate bill

The Senate bill, in section 107, embodied express statutory recognition of the judicial doctrine that the fair use of a copyrighted work is not an infringement of copyright. It set forth the fair use doctrine, including four criteria for determining its applicability in particular cases, in general terms.

House bill

The House bill amended section 107 in two respects: in the general statement of the fair use doctrine it added a specific reference to multiple copies for classroom use, and it amplified the statement of the first of the criteria to be used in judging fair use (the purpose and character of the use) by referring to the commercial nature or nonprofit educational purpose of the use.

Conference substitute

The conference substitute adopts the House amendments. The conferees accept as part of their understanding of fair use the “Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” with respect to books and periodicals appearing at pp. 68–70 of the House Report (H. Rept. No. 94-1476, as corrected at p. H 10727 of the *Congressional Record* for September 21, 1976), and for educational uses of music appearing at pp. 70–71 of the House report, as amended in the statement appearing at p. H 10875 of the *Congressional Record* of September 22, 1976. The conferees also endorse the statement concerning the meaning of the word “teacher” in the guidelines for books and periodicals, and the application of fair use in the case of use of television programs within the confines of a nonprofit educational institution for the deaf and hearing impaired, both of which appear on p. H 10875 of the *Congressional Record* of September 22, 1976.

4. Excerpts from Congressional Debates

NOTE: The following excerpts are reprinted from the *Congressional Record* of September 22, 1976, including statements by Mr. Kastenmeier (Chairman of the House Judiciary Subco

mittee responsible for the bill) on the floor of the House of Representatives.

Mr. KASTENMEIER ... Mr. Chairman, before concluding my remarks I would like to discuss several questions which have been raised concerning the meaning of several provisions of S. 22 as reported by the House Judiciary Committee and of statements in the committee's report, No. 94-1476.

Another question involves the reference to "teacher" in the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" reproduced at pages 68-70 of the committee's report No. 94-1476 in connection with section 107. It has been pointed out that, in planning his or her teaching on a day-to-day basis in a variety of educational situations, an individual teacher will commonly consult with instructional specialists on the staff of the school, such as reading specialists, curriculum specialists, audiovisual directors, guidance counselors, and the like. As long as the copying meets all of the other criteria laid out in the guidelines, including the requirements for spontaneity and the prohibition against the copying being directed by higher authority, the committee regards the concept of "teacher" as broad enough to include instructional specialists working in consultation with actual instructors.

Also in consultation with section 107, the committee's attention has been directed to the unique educational needs and problems of the approximately 50,000 deaf and hearing-impaired students in the United States, and the inadequacy of both public and commercial television to serve their educational needs. It has been suggested that, as long as clear-cut constraints are imposed and enforced, the doctrine of fair use is broad enough to permit the making of an off-the-air fixation of a television program within a nonprofit educational institution for the deaf and hearing impaired, the reproduction of a master and a work copy of a captioned version of the original fixation, and the performance of the program from the work copy within the confines of the institution. In identifying the constraints that would have to be imposed within an institution in order for these activities to be considered as fair use, it has been suggested that the purpose of the use would have to be noncommercial in every respect, and educational in the sense that it serves as part of a deaf or hearing-impaired student's learning environment within the institution, and that the institution would have to insure that the master and work copy would remain in the hands of a limited number of authorized personnel within the institution, would be responsible for assuring against

its unauthorized reproduction or distribution, or its performance or retention for other than educational purposes within the institution. Work copies of captioned programs could be shared among institutions for the deaf abiding by the constraints specified. Assuming that these constraints are both imposed and enforced, and that no other factors intervene to render the use unfair, the committee believes that the activities described could reasonably be considered fair use under section 107.

Mr. Chairman, because of the complexity of this bill and the delicate balances which it creates among competing economic interests, the committee will resist extensive amendment of this bill. On behalf of the committee I would urge all of my colleagues to vote favorably on S. 22.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I am happy to yield to my friend, the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I thank my friend, the gentleman from Wisconsin, for yielding.

Mr. Chairman, I have received a great deal of mail from the schoolteachers in my district who are particularly concerned about section 107—fair use—the fair use of copyrighted material. Having been a former schoolteacher myself, I believe they make a good point and there is a sincere fear on their part that, because of the vagueness or ambiguity in the bill's treatment of the doctrine of fair use, they may subject themselves to liability for an unintentional infringement of copyright when all they were trying to do was the job for which they were trained.

The vast majority of teachers in this country would not knowingly infringe upon a person's copyright, but, as any teacher can appreciate, there are times when information is needed and is available, but it may be literally impossible to locate the right person to approve the use of that material and the purchase of such would not be feasible and, in the meantime, the teacher may have lost that "teachable moment."

Did the subcommittee take these problems into consideration and did they do anything to try and help the teachers to better understand section 107?

Have the teachers been protected by this section 107?

Mr. KASTENMEIER. Mr. Chairman, in response to the gentleman's question and his observations preceding the question, I would say, indeed they have.

Over the years this has been one of the most difficult questions. It is a problem that I believe has been very successfully resolved.

Section 107 on “Fair Use” has, of course, restated four standards, and these standards are, namely: The purpose and character of the use of the material; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

These are the four “Fair Use” criteria. These alone were not adequate to guide teachers, and I am sure the gentleman from Kansas (Mr. Skubitz) understands that as a school-teacher himself.

Therefore, the educators, the proprietors, and the publishers of educational materials did, at the committee’s long insistence, get together. While there were many fruitless meetings, they did finally get together.

Mr. Chairman, I will draw the gentleman’s attention to pages 65 through 74 in the report which contain extensive guidelines for teachers. I am very happy to say that there was an agreement reached between teachers and publishers of educational material, and that today the National Education Association supports the bill, and it has, in fact, sent a telegram which at the appropriate time I will make a part of the Record and which requests support for the bill in its present form, believing that it has satisfied the needs of the teachers:

NATIONAL EDUCATION ASSOCIATION
Washington, D.C., September 10, 1976.

National Education Association urgently requests your support of the Copyright Revision bill, H.R. 2223, as reported by the Judiciary Committee. This compromise effort represents a major breakthrough in establishing equitable legal guidelines for the use of copyright materials for instructional and research purposes. We ask your support of the committee bill without amendments.

JAMES W. GREEN
Assistant Director for Legislation.

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, then the NEA is satisfied with the language in the bill as it now stands; is that correct?

Mr. KASTENMEIER. The gentleman is correct.

Mr. SKUBITZ. Mr. Chairman, I thank the gentleman.

D. Reproduction by Libraries and Archives

1. Text of Section 108

NOTE: The following is a reprint of the entire text of section 108 of title 17, *United States Code* as amended in 1992, 1998, and 2005.

§ 108 · Limitations on exclusive rights: Reproduction by libraries and archives

- (a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if —
- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
 - (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
 - (3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.
- (b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if —
- (1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and
 - (2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.
- (c) The right of reproduction under this section applies to three copies or phonorecords of a published work

duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if —

- (1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and
- (2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

- (d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if —
 - (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
 - (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.
- (e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if —
 - (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

- (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section —

- (1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law;
- (2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;
- (3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or
- (4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee —

- (1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or
- (2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for

distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

- (h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.
- (2) No reproduction, distribution, display, or performance is authorized under this subsection if —
- (A) the work is subject to normal commercial exploitation;
 - (B) a copy or phonorecord of the work can be obtained at a reasonable price; or
 - (C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.
- (3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.
- (i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b), (c), and (h), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

2. Excerpts from Senate Report on Section 108

NOTE: The following excerpts are reprinted from the 1975 Senate Report on the new copyright law (S. Rep. No. 94-473, pages 67–71). Where the discussions of particular points are generally similar in the two Reports, the passages from the later House Report are reprinted in this booklet. Where the discussion of particular points is substantially different, passages from both Reports are reprinted.

a. Senate Report: Discussion of Libraries and Archives in Profit-Making Institutions

The limitation of section 108 to reproduction and distribution by libraries and archives “without any purpose of direct or indirect commercial advantage” is intended to preclude a library or archives in a profit-making organization from providing photocopies of copyrighted materials to employees engaged in furtherance of the organization’s commercial enterprise, unless such copying qualifies as a fair use, or the organization has obtained the necessary copyright licenses. A commercial organization should purchase the number of copies of a work that it requires, or obtain the consent of the copyright owner to the making of the photocopies.

b. Senate Report: Discussion of Multiple Copies and Systematic Reproduction

Multiple copies and systematic reproduction

Subsection (g) provides that the rights granted by this section extend only to the “isolated and unrelated reproduction of a single copy,” but this section does not authorize the related or concerted reproduction of multiple copies of the same material whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group. For example, if a college professor instructs his class to read an article from a copyrighted journal, the school library would not be permitted, under subsection (g), to reproduce copies of the article for the members of the class.

Subsection (g) also provides that section 108 does not authorize the systematic reproduction or distribution of copies or phonorecords of articles or other contributions to copyrighted collections or periodicals or of small parts of other copyrighted works whether or not multiple copies are reproduced or distributed. Systematic reproduction or distribution occurs when a library makes copies of such materials available to other libraries or to groups of users under formal or informal arrangements whose purpose or effect is to have the reproducing library serve as their source of such material. Such systematic reproduction and distribution, as distinguished from isolated and unrelated reproduction or distribution, may substitute the copies reproduced by the source library for subscriptions or reprints or other copies which the receiving libraries or users might otherwise have purchased for themselves, from the publisher or the licensed reproducing agencies.

While it is not possible to formulate specific definitions of “systematic copying,” the following examples serve to illustrate some of the copying prohibited by subsection (g).

- 1 A library with a collection of journals in biology informs other libraries with similar collections that it will maintain and build its own collection and will make copies of articles from these journals available to them and their patrons on request. Accordingly, the other libraries discontinue or refrain from purchasing subscriptions to these journals and fulfill their patrons' requests for articles by obtaining photocopies from the source library.
- 2 A research center employing a number of scientists and technicians subscribes to one or two copies of needed periodicals. By reproducing photocopies of articles the center is able to make the material in these periodicals available to its staff in the same manner which otherwise would have required multiple subscriptions.
- 3 Several branches of a library system agree that one branch will subscribe to particular journals in lieu of each branch purchasing its own subscriptions, and the one subscribing branch will reproduce copies of articles from the publication for users of the other branches.

The committee believes that section 108 provides an appropriate statutory balancing of the rights of creators and the needs of users. However, neither a statute nor legislative history can specify precisely which library photocopying practices constitute the making of "single copies" as distinguished from "systematic reproduction." Isolated single spontaneous requests must be distinguished from "systematic reproduction." The photocopying needs of such operations as multi-county regional systems must be met. The committee therefore recommends that representatives of authors, book and periodical publishers and other owners of copyrighted material meet with the library community to formulate photocopying guidelines to assist library patrons and employees. Concerning library photocopying practices not authorized by this legislation, the committee recommends that workable clearance and licensing procedures be developed.

It is still uncertain how far a library may go under the Copyright Act of 1909 in supplying a photocopy of copyrighted material in its collection. The recent case of *The Williams and Wilkins Company v. The United States* failed to significantly illuminate the application of the fair use doctrine to library photocopying practices. Indeed, the opinion of the Court of Claims said the Court was engaged in "a 'holding operation' in the interim period before Congress enacted its preferred solution."

While the several opinions in the *Wilkins* case have given the Congress little guidance as to the current state of the law on fair use, these opinions provide additional support for

the balanced resolution of the photocopying issue adopted by the Senate last year in S. 1361 and preserved in section 108 of this legislation. As the Court of Claims opinion succinctly stated "there is much to be said on all sides."

In adopting these provisions on library photocopying, the committee is aware that through such programs as those of the National Commission on Libraries and Information Science there will be a significant evolution in the functioning and services of libraries. To consider the possible need for changes in copyright law and procedures as a result of new technology, a National Commission on New Technological Uses of Copyrighted Works (CONTU) has been established (Public Law 93-573).

3. Excerpts from House Report on Section 108

NOTE: The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 74-79). All of the House Report's discussion of section 108 is reprinted here; similarities and differences between the House and Senate Reports on particular points will be noted below.

a. House Report: Introductory Statement

NOTE: This paragraph is substantially the same in the Senate and House Reports.

Notwithstanding the exclusive rights of the owners of copyright, section 108 provides that under certain conditions it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce or distribute not more than one copy or phonorecord of a work, provided (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage and (2) the collections of the library or archives are open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field, and (3) the reproduction or distribution of the work includes a notice of copyright.

b. House Report: Discussion of Libraries and Archives in Profit-Making Institutions

NOTE: The Senate and House Reports differ substantially on this point. The Senate Report's discussion is reprinted at page 13.

Under this provision, a purely commercial enterprise could not establish a collection of copyrighted works, call itself

a library or archive, and engage in for-profit reproduction and distribution of photocopies. Similarly, it would not be possible for a nonprofit institution, by means of contractual arrangements with a commercial copying enterprise, to authorize the enterprise to carry out copying and distribution functions that would be exempt if conducted by the non-profit institution itself.

The reference to “indirect commercial advantage” has raised questions as to the status of photocopying done by or for libraries or archival collections within industrial, profit-making, or proprietary institutions (such as the research and development departments of chemical, pharmaceutical, automobile, and oil corporations, the library of a proprietary hospital, the collections owned by a law or medical partnership, etc.).

There is a direct interrelationship between this problem and the prohibitions against “multiple” and “systematic” photocopying in section 108(g)(1) and (2). Under section 108, a library in a profit-making organization would not be authorized to:

- A use a single subscription or copy to supply its employees with multiple copies of material relevant to their work; or
- B use a single subscription or copy to supply its employees, on request, with single copies of material relevant to their work, where the arrangement is “systematic” in the sense of deliberately substituting photocopying for subscription or purchase; or
- C use “interlibrary loan” arrangements for obtaining photocopies in such aggregate quantities as to substitute for subscriptions or purchase of material needed by employees in their work.

Moreover, a library in a profit-making organization could not evade these obligations by installing reproducing equipment on its premises for unsupervised use by the organization’s staff.

Isolated, spontaneous making of single photocopies by a library in a for-profit organization, without any systematic effort to substitute photocopying for subscriptions or purchases, would be covered by section 108, even though the copies are furnished to the employees of the organization for use in their work. Similarly, for-profit libraries could participate in interlibrary arrangements for exchange of photocopies, as long as the reproduction or distribution was not “systematic.” These activities, by themselves, would ordinarily not be considered “for direct or indirect commercial advantage,” since the “advantage” referred to in this clause must attach to the immediate commercial motivation behind the reproduction or distribution itself, rather than to the

ultimate profit-making motivation behind the enterprise in which the library is located. On the other hand, section 108 would not excuse reproduction or distribution if there were a commercial motive behind the actual making or distributing of the copies, if multiple copies were made or distributed, or if the photocopying activities were “systematic” in the sense that their aim was to substitute for subscriptions or purchases.

c. House Report: Rights of Reproduction and Distribution Under Section 108

NOTE: The following paragraphs are closely similar in the Senate and House Reports.

The rights of reproduction and distribution under section 108 apply in the following circumstances:

Archival reproductions

Subsection (b) authorizes the reproduction and distribution of a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security, or for deposit for research use in another library or archives, if the copy or phonorecord reproduced is currently in the collections of the first library or archives. Only unpublished works could be reproduced under this exemption, but the right would extend to any type of work, including photographs, motion pictures and sound recordings. Under this exemption, for example, a repository could make photocopies of manuscripts by microfilm or electrostatic process, but could not reproduce the work in “machine-readable” language for storage in an information system.

Replacement of damaged copy

Subsection (c) authorizes the reproduction of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price. The scope and nature of a reasonable investigation to determine that an unused replacement cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if such owner can be located at the address listed in the copyright registration), or an authorized reproducing service.

Articles and small excerpts

Subsection (d) authorizes the reproduction and distribution of a copy of not more than one article or other contribution to a copyrighted collection or periodical issue, or of a copy or phonorecord of a small part of any other copyrighted work. The copy or phonorecord may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purposes other than private study, scholarship or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and includes in its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

Out-of-print works

Subsection (e) authorizes the reproduction and distribution of a copy or phonorecord of an entire work under certain circumstances, if it has been established that a copy cannot be obtained at a fair price. The copy may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. The scope and nature of a reasonable investigation to determine that an unused copy cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if the owner can be located at the address listed in the copyright registration), or an authorized reproducing service. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purpose other than private study, scholarship, or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

d. House Report: General Exemptions for Libraries and Archives

NOTE: Parts of the following paragraphs are substantially similar in the Senate and House Reports. Differences in the House Report on certain points reflect certain amendments in section 108(f) and elsewhere in the Copyright Act.

General exemptions

Clause (1) of subsection (f) specifically exempts a library or archives or its employees from liability for the unsupervised use of reproducing equipment located on its premises, provided that the reproducing equipment displays a notice that the making of a copy may be subject to the copyright law. Clause (2) of subsection (f) makes clear that this exemption of the library or archives does not extend to the person using such equipment or requesting such copy if the use exceeds fair use. Insofar as such person is concerned the copy or phonorecord made is not considered “lawfully” made for purposes of sections 109, 110 or other provisions of the title.

Clause (3) provides that nothing in section 108 is intended to limit the reproduction and distribution by lending of a limited number of copies and excerpts of an audiovisual news program. This exemption is intended to apply to the daily newscasts of the national television networks, which report the major events of the day. It does not apply to documentary (except documentary programs involving news reporting as that term is used in section 107), magazine-format or other public affairs broadcasts dealing with subjects of general interest to the viewing public.

The clause was first added to the revision bill in 1974 by the adoption of an amendment proposed by Senator Baker. It is intended to permit libraries and archives, subject to the general conditions of this section, to make off-the-air videotape recordings of daily network newscasts for limited distribution to scholars and researchers for use in research purposes. As such, it is an adjunct to the American Television and Radio Archive established in Section 113 of the Act which will be the principal repository for television broadcast material, including news broadcasts. The inclusion of language indicating that such material may only be distributed by lending by the library or archive is intended to preclude performance, copying, or sale, whether or not for profit, by the recipient of a copy of a television broadcast taped off-the-air pursuant to this clause.

Clause (4), in addition to asserting that nothing contained in section 108 “affects the right of fair use as provided by section 107,” also provides that the right of reproduction granted by this section does not override any contractual arrangements assumed by a library or archives when it obtained a work for its collections. For example, if there is an express contractual prohibition against reproduction for any purpose, this legislation shall not be construed as justifying a violation of the contract. This clause is intended to encompass the situation where an individual makes papers, manuscripts or other works available to a library with the understanding that they will not be reproduced.

It is the intent of this legislation that a subsequent unlawful use by a user of a copy or phonorecord of a work lawfully made by a library, shall not make the library liable for such improper use.

e. House Report: Discussion of Multiple Copies and Systematic Reproduction

NOTE: The Senate and House Reports differ substantially on this point. The Senate Report's discussion is reprinted at page 13.

Multiple copies and systematic reproduction

Subsection (g) provides that the rights granted by this section extend only to the "isolated and unrelated reproduction of a single copy or phonorecord of the same material on separate occasions." However, this section does not authorize the related or concerted reproduction of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group.

With respect to material described in subsection (d)—articles or other contributions to periodicals or collections, and small parts of other copyrighted works—subsection (g) (2) provides that the exemptions of section 108 do not apply if the library or archive engages in "systematic reproduction or distribution of single or multiple copies or phonorecords." This provision in S.22 provoked a storm of controversy, centering around the extent to which the restrictions on "systematic" activities would prevent the continuation and development of interlibrary networks and other arrangements involving the exchange of photocopies. After thorough consideration, the Committee amended section 108(g)(2) to add the following proviso: Provided, that nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

In addition, the Committee added a new subsection (i) to section 108, requiring the Register of Copyrights, five years from the effective date of the new Act and at five year intervals thereafter, to report to Congress upon "the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users," and to make appropriate legislative or other recommendations. As noted in connection with section 107, the Committee also

amended section 504(c) in a way that would insulate librarians from unwarranted liability for copyright infringement; this amendment is discussed below.

The key phrases in the Committee's amendment of section 108(g)(2) are "aggregate quantities" and "substitute for a subscription to or purchase of" a work. To be implemented effectively in practice, these provisions will require the development and implementation of more-or-less specific guidelines establishing criteria to govern various situations.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) offered to provide good offices in helping to develop these guidelines. This offer was accepted and, although the final text of guidelines has not yet been achieved, the Committee has reason to hope that, within the next month, some agreement can be reached on an initial set of guidelines covering practices under section 108(g)(2).

f. House Report: Discussion of Works Excluded

NOTE: The House Report's discussion of section 108(h) is longer than the corresponding paragraph in the Senate Report, and reflects certain amendments in the subsection.

Works excluded

Subsection (h) provides that the rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than "an audiovisual work dealing with news." The latter term is intended as the equivalent in meaning of the phrase "audiovisual news program" in section 108(f)(3). The exclusions under subsection (h) do not apply to archival reproduction under subsection (b), to replacement of damaged or lost copies or phonorecords under subsection (c), or to "pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e)."

Although subsection (h) generally removes musical, graphic, and audiovisual works from the specific exemptions of section 108, it is important to recognize that the doctrine of fair use under section 107 remains fully applicable to the photocopying or other reproduction of such works. In the case of music, for example, it would be fair use for a scholar doing musicological research to have a library supply a copy of a portion of a score or to reproduce portions of a phonorecord of a work. Nothing in section 108 impairs the applicability of the fair use doctrine to a wide variety of situations involving photocopying or other reproduction by a

library of copyrighted material in its collections, where the user requests the reproduction for legitimate scholarly or research purposes.

4. Excerpts from Conference Report

NOTE: The following excerpt is reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, pages 70–74).

a. Conference Report: Introductory Discussion of Section 108

Reproduction by Libraries and Archives

Senate bill

Section 108 of the Senate bill dealt with a variety of situations involving photocopying and other forms of reproduction by libraries and archives. It specified the conditions under which single copies of copyrighted material can be noncommercially reproduced and distributed, but made clear that the privileges of a library or archives under the section do not apply where the reproduction or distribution is of multiple copies or is “systematic.” Under subsection (f), the section was not to be construed as limiting the reproduction and distribution, by a library or archive meeting the basic criteria of the section, of a limited number of copies and excerpts of an audiovisual news program.

House bill

The House bill amended section 108 to make clear that, in cases involving interlibrary arrangements for the exchange of photocopies, the activity would not be considered “systematic” as long as the library or archives receiving the reproductions for distribution does not do so in such aggregate quantities as to substitute for a subscription to or purchase of the work. A new subsection (i) directed the Register of Copyrights, by the end of 1982 and at five-year intervals thereafter, to report on the practical success of the section in balancing the various interests, and to make recommendations for any needed changes. With respect to audiovisual news programs, the House bill limited the scope of the distribution privilege confirmed by section 108(f)(3) to cases where the distribution takes the form of a loan.

b. Conference Report: Conference Committee Discussion of CONTU Guidelines on Photocopying and Interlibrary Arrangements

Conference substitute

The conference substitute adopts the provisions of section 108 as amended by the House bill. In doing so, the conferees have noted two letters dated September 22, 1976, sent respectively to John L. McClellan, Chairman of the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights, and to Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The letters, from the Chairman of the National Commission on New Technological Uses of Copyrighted Works (CONTU), Stanley H. Fuld, transmitted a document consisting of “guidelines interpreting the provision in subsection 108(g)(2) of S. 22, as approved by the House Committee on the Judiciary.” Chairman Fuld’s letters explain that, following lengthy consultations with the parties concerned, the Commission adopted these guidelines as fair and workable and with the hope that the conferees on S. 22 may find that they merit inclusion in the conference report. The letters add that, although time did not permit securing signatures of the representatives of the principal library organizations or of the organizations representing publishers and authors on these guidelines, the Commission had received oral assurances from these representatives that the guidelines are acceptable to their organizations,

The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases, now or in the future. It is recognized that their purpose is to provide guidance in the most commonly-encountered interlibrary photocopying situations, that they are not intended to be limiting or determinative in themselves or with respect to other situations, and that they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment. With these qualifications, the conference committee agrees that the guidelines are a reasonable interpretation of the proviso of section 108(g)(2) in the most common situations to which they apply today.

c. Conference Report: Reprint of CONTU Guidelines on Photocopying and Interlibrary Arrangements

The text of the guidelines follows:

Photocopying—Interlibrary Arrangements Introduction

Subsection 108(g)(2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying.

It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements “that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.”

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of “such aggregate quantities.” The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108(g)(2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library’s obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals—those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

Guidelines for the Proviso of Subsection 108(g)(2)

- 1 As used in the proviso of subsection 108(g)(2), the words “... such aggregate quantities as to substitute for a subscription to or purchase of such work” shall mean:
 - A with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a “requesting entity”) within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of “... such aggregate quantities as to substitute for a subscription to [such periodical]”.
 - B With respect to any other material described in subsection 108(d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.
- 2 In the event that a requesting entity—
 - A shall have in force or shall have entered an order for a subscription to a periodical, or
 - B has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the “supplying entity”), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.
- 3 No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.
- 4 The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.
- 5 As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

d. Conference Report: Discussion of “Audiovisual News Program”

The conference committee is aware that an issue has arisen as to the meaning of the phrase “audiovisual news program” in section 108(f)(3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108(a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

e. Conference Report: Discussion of Libraries and Archives in Profit-Making Institutions

Another point of interpretation involves the meaning of “indirect commercial advantage,” as used in section 108(a)(1), in the case of libraries or archival collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108(a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

5. Copyright Office Regulations Under Section 108

NOTE: The following is the text of regulations adopted by the Copyright Office to implement sections 108(d)(2) and 108(e) of the new copyright law (37 *Code of Federal Regulations* §201.14).

§ 201.14 · Warnings of copyright for use by certain libraries and archives.

(a) Definitions.

- (1) A *Display Warning of Copyright* is a notice under paragraphs (d)(2) and (e)(2) of section 108 of title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the “Display Warning of Copyright” is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

- (2) An *Order Warning of Copyright* is a notice under paragraphs (d)(2) and (e)(2) of section 108 of title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the “Order Warning of Copyright” is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

- (b) *Contents.* A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) *Form and Manner of Use.*

- (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.
- (2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

E. Liability for Infringement

1. Text of Section 504

NOTE: The following is a reprint of the entire text of section 504 of title 17, *United States Code*, as amended in 1982, 1988, 1990, 1997, 1998, 1999, 2002, 2004, and 2005. The special provisions affecting librarians and educators are in subsection (c)(2).

§ 504 · Remedies for infringement: Damages and profits.

- (a) **IN GENERAL.**— Except as otherwise provided by this title, an infringer of copyright is liable for either—
- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
 - (2) statutory damages, as provided by subsection (c).
- (b) **ACTUAL DAMAGES AND PROFITS.**— The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.
- (c) **STATUTORY DAMAGES.**—
- (1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.
 - (2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and

the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was:

- (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or
- (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

- (3)(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.
- (B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.
- (C) For purposes of this paragraph, the term "domain name" has the meaning given that term in section 45 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" approved July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1127).
- (d) **ADDITIONAL DAMAGES IN CERTAIN CASES.**— In any case in which the court finds that a defendant

proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

2. Excerpts from House Report on Section 504

NOTE: The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 161–163). Material not of immediate interest to librarians and educators has been omitted. Much of the corresponding discussion in the Senate Report (S. Rep. No. 94-473, pages 143–145) is substantially the same; the House Report’s discussion of statutory damages applicable to librarians and educators is new.

In general

A cornerstone of the remedies sections and of the bill as a whole is section 504, the provision dealing with recovery of actual damages, profits, and statutory damages. The two basic aims of this section are reciprocal and correlative:

- 1 to give the courts specific unambiguous directions concerning monetary awards, thus avoiding the confusion and uncertainty that have marked the present law on the subject, and, at the same time,
- 2 to provide the courts with reasonable latitude to adjust recovery to the circumstances of the case, thus avoiding some of the artificial or overly technical awards resulting from the language of the existing statute.

Subsection (a) lays the groundwork for the more detailed provisions of the section by establishing the liability of a copyright infringer for either “the copyright owner’s actual damages and any additional profits of the infringer,” or statutory damages. Recovery of actual damages and profits under section 504(b) or of statutory damages under section 504(c) is alternative and for the copyright owner to elect; as under the present law, the plaintiff in an infringement suit is not obliged to submit proof of damages and profits and may choose to rely on the provision for minimum statutory damages. However, there is nothing in section 504 to prevent a court from taking account of evidence concerning actual

damages and profits in making an award of statutory damages within the range set out in subsection (c).

Actual damages and profits

In allowing the plaintiff to recover “the actual damages suffered by him or her as a result of the infringement,” plus any of the infringer’s profits “that are attributable to the infringement and are not taken into account in computing the actual damages,” section 504(b) recognizes the different purposes served by awards of damages and profits. Damages are awarded to compensate the copyright owner for losses from the infringement, and profits are awarded to prevent the infringer from unfairly benefiting from a wrongful act.⁴

Statutory damages

Subsection (c) of section 504 makes clear that the plaintiff’s election to recover statutory damages may take place at any time during the trial before the court has rendered its final judgment. The remainder of clause (1) of the subsection represents a statement of the general rates applicable to awards of statutory damages.

Clause (2) of section 504(c) provides for exceptional cases in which the maximum award of statutory damages could be raised from \$10,000 to \$50,000, and in which the minimum recovery could be reduced from \$250 to \$100. The basic principle underlying this provision is that the courts should be given discretion to increase statutory damages in cases of willful infringement and to lower the minimum where the infringer is innocent. The language of the clause makes clear that in these situations the burden of proving willfulness rests on the copyright owner and that of proving innocence rests on the infringer, and that the court must make a finding of either willfulness or innocence in order to award the exceptional amounts.

The “innocent infringer” provision of section 504(c)(2) has been the subject of extensive discussion. The exception, which would allow reduction of minimum statutory damages to \$100 where the infringer “was not aware and had no reason to believe that his or her acts constituted an infringement of copyright,” is sufficient to protect against unwarranted liability in cases of occasional or isolated innocent infringement, and it offers adequate insulation to users, such as broadcasters and newspaper publishers, who are particularly vulnerable to this type of infringement suit. On the other hand, by establishing a realistic floor for liability, the provision preserves its intended deterrent effect; and it would not allow an infringer to escape simply because the plaintiff failed to disprove the defendant’s claim of innocence.

In addition to the general “innocent infringer” provision clause (2) deals with the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part. Section 504(c)(2) provides that, where such a person or institution infringes copyrighted material in the honest belief that what they were doing constituted fair use, the court is precluded from awarding any statutory damages. It is intended that, in cases involving this provision, the burden of proof with respect to the defendant’s good faith should rest on the plaintiff.

3. Excerpts from Conference Report on Section 504

NOTE: The following excerpts are reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, pages 79–80).

Remedies for Copyright Infringement

Senate bill

Chapter 5 of the Senate bill dealt with civil and criminal infringement of copyright and the remedies for both. Subsection (c) of section 504 allowed statutory damages within a stated dollar range, and clause (2) of that subsection provided for situations in which the maximum could be exceeded and the minimum lowered; the court was given discretion to reduce or remit statutory damages entirely where a teacher, librarian, or archivist believed that the infringing activity constituted fair use.⁵

House bill

Section 504(c)(2) of the House bill required the court to remit statutory damages entirely in cases where a teacher, librarian, archivist, or public broadcaster, or the institution to which they belong, infringed in the honest belief that what they were doing constituted fair use.⁶

Conference substitute

The conference substitute adopts the House amendments with respect to statutory damages in section 504(c)(2).⁷

F. Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes

NOTE: The following excerpts are reprinted from the House Report on piracy and counterfeiting amendments (H.R. 97-495, pages 8–9).

In March 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of educational organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee’s consensus as to the application of “fair use” to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

- 1 The guidelines were developed to apply only to off-air recording by non-profit educational institutions.
- 2 A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. “Broadcast programs” are television programs transmitted by television stations for reception by the general public without charge.
- 3 Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. “School days” are school session days — not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions — within the forty-five (45) calendar day retention period.
- 4 Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
- 5 A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

- 6 After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
- 7 Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
- 8 All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
- 9 Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

For Further Information

By Internet

Circulars, announcements, regulations, other related materials, and certain copyright application forms are available from the Copyright Office website at www.copyright.gov. To send an email communication, click on *Contact Us* at the bottom of the homepage.

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 AM to 5:00 PM, Monday through Friday, eastern time, except federal holidays. Recorded information is available 24 hours a day. Or, if you know which application forms and circulars you want, request them from the Forms and Publications Hotline at (202) 707-9100 24 hours a day. Leave a recorded message.

By Regular Mail

Write to:

*Library of Congress
Copyright Office-COPUBS
101 Independence Avenue SE
Washington, DC 20559*

Endnotes

- 1 Corrected from *Congressional Record*.
- 2 As reprinted in the House Report, subsection A.2 of the Music Guidelines had consisted of two separate paragraphs, one dealing with multiple copies and a second dealing with single copies. In his introductory remarks during the House debates on S.22, the Chairman of the House Judiciary Subcommittee, Mr. Kastenmeier, announced that “the report, as printed, does not reflect a subsequent change in the joint guidelines which was described in a subsequent letter to me from a representative of [the signatory organizations],” and provided the revised text of subsection A.2. (122 Cong. Rec. H 10875, Sept. 22, 1976). The text reprinted here is the revised text.
- 3–7 Section 504 was amended by the Act of October 31, 1988, Pub. L. 100-568, 102 Stat. 2853, 2860; by the Act of 1999, Pub. L. 106-160, 113 Stat. 1774; and by the Act of December 23, 2004, Pub. L. 108-482, 118 Stat. 3912, 3916.

Lyons-Decatur Public Schools Facility Use Application

Applicant Name ("Applicant"): _____
Organization Name ("Organization"), if applicable: _____
Applicant's Position within Organization: _____
Address: _____
Phone Number: _____ Email: _____
Description of Requested Use: _____

Is your organization a registered 501(c)(3) or other nonprofit? Yes No
Date of Requested Use: _____ Time of Requested Use: _____ to _____
Facility/Room Request, if preferred: _____
Expected Number of Attendees: _____

Check any of the following needs which apply to your request. Note that the district may deem additional services necessary and may require the Applicant/Organization to pay for such services as a condition of use:

- Custodial (set up, tear down, sanitation)
- Kitchen/Kitchen Staff (cooking, food service, clean up)
- Technology Assistance (sound, lighting, presentation)

Liability Insurance, check applicable:

- I/we have coverage of \$5 million per occurrence.
- I/we have other coverage: _____
- I/we have no insurance coverage

Terms and Conditions of Use:

1. All users must comply with the school board's facility use and other policies, rules, and regulations. A copy of the board's facility use policy is available upon request.
2. The facilities are closed from 10 PM to 7 AM and may not be used during those hours.
3. The user(s) named above and the individual(s) signing on behalf of the User agree to defend, indemnify, and hold harmless the school district, its employees and agents for any expense, cost, loss, damage, claim, judgment or claims bill incurred or rendered against same, including attorneys' fees and investigation expenses (pre-suit, suit, trial, appeal, and post appeal proceedings) on account of any intentional or negligent acts or omissions of the user or its employees, agents or servants, or any intentional or negligent acts or omissions of the district or its employees, agents or servants arising out of the use of any facility under this agreement.
4. All non-governmental users may be required to provide a certificate of insurance and name the district as an additional insured, on a primary and non-contributory basis, and provide documentation evidencing general liability coverage under an occurrence basis policy, with minimum limits of \$5,000,000.00 per occurrence, combined single limit covering bodily injury, property damage, personal injury, premises, operations, products, completed

operations, independent contractors, and contractual liability. These coverage limits may be achieved through a combination of underlying policies and umbrella/excess policies, if preferred. There shall be no exclusions for contracted liability. All governmental users shall provide evidence of insurance or self-insurance to the limits set forth in NEB. REV. STAT. § 13-926.

5. All users are subject to the fee schedule established by the school board, and all Applicants by signing below verify that they have authority to sign this application on behalf of the listed Organization, and all individuals and agents of organizations certify that they have financial means and authorization to pay for the required fees and deposits, if any.

Applicant's Signature: _____

Date: _____

For District Use Only

Application

- Denied
- Approved, subject to the following

Insurance

- User has provided sufficient proof of insurance.
- User must obtain proof of insurance and list district as additional insured.
- Insurance requirements are waived.

Additional Services Requested/Required

- Custodial: \$ _____
- Kitchen: \$ _____
- Technology: \$ _____
- None

Total Fee Required to Grant Use: \$ _____

**Guest Speaker Request Form
Assembly**

Teacher/Sponsor: _____

Date: _____

Proposed Date and Time: _____

Speaker: _____

Speaker Affiliation: _____

Purpose and Message of Presentation: _____

Speaker Qualifications: _____

I have read school district policy regarding guest speakers and have complied or will comply with all of its requirements.

Teacher

Date

Superintendent

Date

Approved: _____

Denied: _____

Reason: _____

**Guest Speaker Request Form
Classroom or School-Sponsored Activity**

Teacher/Sponsor: _____

Date: _____

Class/Activity: _____

Proposed Date and Time: _____

Speaker: _____

Speaker Affiliation: _____

Purpose and Message of Presentation: _____

Speaker Qualifications: _____

I have read school district policy regarding guest speakers and have complied or will comply with all of its requirements.

Teacher

Date

Principal

Date

Approved: _____

Denied: _____

Reason: _____

NALOXONE ADMINISTRATION PROTOCOL

RECOGNIZE:

Observe individual for signs and symptoms of opioid overdose

Suspected or confirmed opioid overdose consists of:

- Respiratory depression evidenced by slow respirations or no breathing (apnea)
- Unresponsiveness to stimuli (such as calling name, shaking, sternal rub)

Suspicion of opioid overdose can be based on:

- Presenting symptoms
- History
- Report from bystanders
- School nurse or staff prior knowledge of person
- Nearby medications, illicit drugs or drug paraphernalia

Opioid Overdose vs. Opioid High

Opioid High	Opioid Overdose
Relaxed muscles	Pale, clammy skin
Speech slowed, slurred, breathing	Speech infrequent, not breathing, very shallow breathing
Appears sleepy, nodding off	Deep snorting or gurgling
Responds to stimuli	Unresponsive to stimuli (calling name, shaking, sternal rub)
Normal heart beat/pulse	Slowed heart beat/pulse
Normal skin color	Cyanotic skin coloration (blue lips, fingertips)
	Pinpoint pupils

(Adapted from Massachusetts Department of Public Health Opioid Overdose Education and Naloxone Distribution)

RESPOND

Immediately call for help

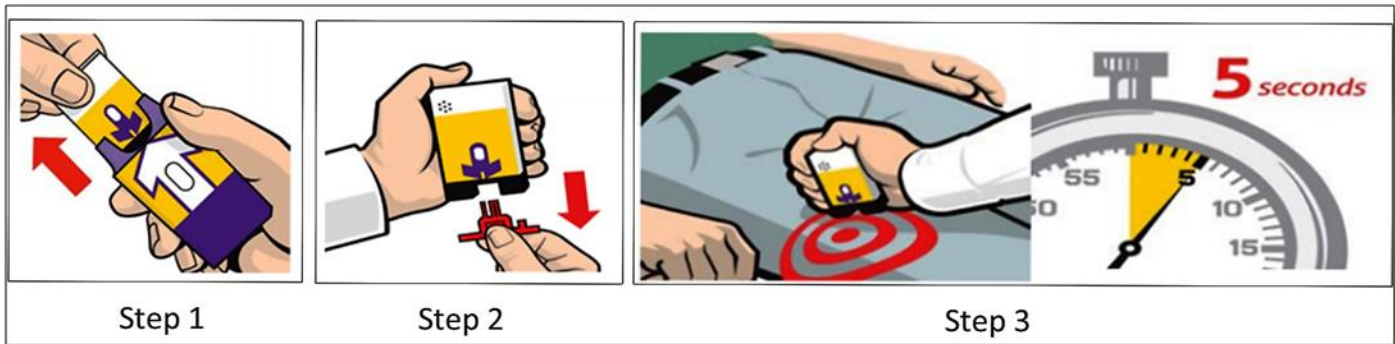
- Call for help- Dial 911.
 - Request Advanced Life Support.
- Assess breathing: Perform rescue breathing if needed.
 - Place the person on their back.
 - Tilt their chin up to open the airway.
 - Check to see if there is anything in their mouth blocking their airway, such as gum, toothpick, undissolved pills, syringe cap, cheeked Fentanyl patch.
 - If present. remove it.
 - If using mask, place and hold mask over mouth and nose.
 - If not using mask, pinch their nose with one hand and place your mouth over their mouth
 - Give 2 even, regular-sized breaths.
 - Blow enough air into their lungs to make their chest rise.
 - If you are using a mask and don't see their chest rise, out of the corner of your eye, tilt the head back more and make sure the seal around the mouth and nose is secure.
 - If you are not using a mask and don't see their chest rise, out of the corner of your eye make sure you're pinching their nose.
 - Breathe again.
 - Give one breath every 5 seconds.

REVERSE

Administer naloxone

Via IV auto injectable (Evzio):

Remove red safety guard when ready to use. Place the black end against the middle of the patient's outer thigh, through clothing (pants, jeans, etc) if necessary, then press firmly and hold in place for 5 seconds. After use, place the auto-injector back into its outer case. Do not replace the **red** safety guard.



(Graphic credit: kaleo, 2016)

- Place person in recovery position (lying on their side).
- Stay with the person until help arrives.
- Seize all illegal and/or non-prescribed opioid narcotics found on victim and process in accordance with school district protocols.

Note: Using naloxone in patients who are opioid dependent may result in severe opioid withdrawal symptoms such as restlessness or irritability, body aches, diarrhea, increased heart rate (tachycardia), fever, runny nose, sneezing, goose bumps (piloerection), sweating, yawning, nausea or vomiting, nervousness, shivering or trembling, abdominal cramps, weakness, and increased blood pressure. **Risk of adverse reaction should not be a deterrent to administration of naloxone.**

REFER

- Have the individual transported to nearest medical facility, even if symptoms seem to get better.
- Contact parent/guardians per school protocol.
- Complete Naloxone Administration Report form.
- Follow up with treatment referral recommendations.

References

- Centers for Disease Control and Prevention. (2012). Community-Based Opioid Overdose Prevention Programs Providing Naloxone — United States, 2010 MMWR February 17, 2012/ 61(06), 101-105. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6106a1.htm>
- Davis, C., Webb, D., Burris, S. (2013). Changing Law from Barrier to Facilitator of Opioid Overdose Prevention. Journal of Law, Medicine & Ethics, 41(Suppl. 1), 33-36.
- Harm Reduction Coalition. (n.d.). Perform Rescue Breathing. Available at: <http://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/responding-to-opioid-overdose/perform-rescue-breathing/>
- Kaleo. (2014) Evzio™ prescribing information. Kaleo, Inc.
- Loimer, N., Hofmann, P., Chaudhry, H.R. (1992). Nasal administration of naloxone for detection of opiate dependence. Journal of Psychiatric Research, 26, 39-43.
- Massachusetts Department of Public Health Opioid Overdose Education and Naloxone Distribution. (n.d.) Opioid Overdose Education and Naloxone Distribution MDPH Naloxone pilot project Core Competencies. Available at: <http://www.mass.gov/eohhs/docs/dph/substance-abuse/core-competencies-for-naloxone-pilot-participants.pdf>

Subject: Nebraska Naloxone Standing Order Information

Nebraska Naloxone Standing Order Information

Dear Pharmacists,

Opioid overdose deaths are a growing concern in Nebraska. In 2016, 128 people died of a drug overdose and at least 38 of those deaths were opioid related. Nebraska's drug overdose death rate has increased over the last decade – 6.9 overdose deaths for every 100,000 people in 2016 which is up from 3.6 in 2004.

Nebraska DHHS, Division of Public Health, Tom Safranek, MD, has issued a standing order to further facilitate the availability of Naloxone (in accordance with Neb. Rev. Stat. §28-470 and §38-2840). Expanding the availability of naloxone to friends, family and bystanders will increase the likelihood that it will be administered in a timely manner, and prevent death from an opioid overdose.

Details specific to the Naloxone Standing Order are included below in the attached document. Information that will be useful to you to proceed with the standing order for naloxone includes:

Tom Safranek, MD
NP # - 1699867341
301 Centennial Mall South, Lincoln NE 68509
402-471-2937/ 402-471-0550

If you have questions about the Naloxone Standing Order please contact Ashely Newmyer at Ashley.newmyer@nebraska.gov or 402-471-4377.

Nebraska Naloxone Standing Order

Background:

On May 27th 2015, LB 390 was signed into law. This law authorized the expanded access to Naloxone a life-saving drug used to reverse the effects of an opioid overdose. Although the Naloxone statute (Neb. Rev. Stat. §28-470) allows for dispensing Naloxone without a prescription, if a prescription is desired this standing order can be used in its place, pursuant to Neb. Rev. Stat. §38-2840.

Opioid overdose deaths are a growing concern in Nebraska. Since 1999, Nebraska has seen an increase in drug overdose deaths.

Purpose:

This standing order, in accordance with Neb. Rev. Stat. §28-470 and §38-2840, is issued to further facilitate the availability of Naloxone.

Expanding the availability of naloxone to friends, family and bystanders will increase the likelihood that it will be administered in a timely manner, and prevent death from an opioid overdose.

Immunity:

Neb. Rev. Stat §28-470 provides protection from administrative action or criminal prosecution when a pharmacist dispenses naloxone under the following limited circumstances:

- A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or
- A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.
- A family member, friend, or other person who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

Dispensing Guidelines:

Nasal administration

- Narcan® Nasal Spray (naloxone HCl) 4 mg/0.1ml Nasal Spray
Dispense one (1) box containing two (2) 4 mg/0.1 ml doses of naloxone
Instructions: Spray 0.1 ml into one nostril. Call 911. Repeat with second device into the other nostril after 2-3 minutes if no or minimal response. Monitor the person until professional help arrives.
- Naloxone HCl Solution 1mg/ml in a 2 ml pre-filled Luer-Lock Syringe
Dispense: 2 x 2 ml syringes (4 ml total) with two nasal mucosal atomization devices

Instructions: Spray 1ml (1/2 of syringe) into each nostril. Call 911. Repeat after 2-3 minutes if no or minimal response. Monitor the person until professional help arrives.

Intramuscular (IM) administration

- Evzio® (naloxone HCl injection) 0.4 mg autoinjector
Dispense one box containing two auto-injectors
Inject into outer thigh as directed by the English voice-prompt system. Place black side firmly on outer thigh and depress and hold for 5 seconds. Call 911. Repeat with second device in 2-3 minutes if no or minimal response. Monitor the person until professional help arrives.
- Naloxone HCl 0.4 mg/ml in a 1ml unit dose vial
Dispense: 2 x 1ml unit dose vials and two (2) 3cc syringes with 23-25G 1-1.5 inch needles for intramuscular injection.
Instructions: Inject 1 ml in shoulder or thigh. Call 911. Repeat after 2-3 minutes if no or minimal response. Monitor the person until professional help arrives.

Prices vary widely for the different products and reimbursement practices vary by insurer.

Dispense at least 2 doses of naloxone to an individual. Refills may be dispensed under this standing order.

Signs and symptoms of opioid-related overdose

The following may be signs and symptoms of an individual experiencing an opioid-related overdose:

- A history of current narcotic or opioid use or fentanyl patches on skin or needle in the body.
- Unresponsive or unconscious individuals.
- Not breathing or slow/shallow respirations,
- Snoring or gurgling sounds (due to partial upper airway obstruction).
- Blue lips and/or nail beds.
- Pinpoint pupils.
- Clammy skin.

Note that individuals in cardiac arrest from all causes share many symptoms with someone with a narcotic overdose (unresponsiveness, not breathing, snoring/gurgling sounds, and blue skin/nail beds). If no pulse, these individuals are in cardiac arrest and require CPR.

Adverse reactions :

A. Opioid depression

Abrupt reversal of opioid depression may result in nausea, vomiting, sweating, abnormal heart beat, fluid development in the lungs and opioid acute withdrawal syndrome (see part "B" below), increased blood pressure, shaking, shivering, seizures and hot flashes.

B. Opioid dependence

Abrupt reversal of opioid effects in persons who are physically dependent on opioids may cause an acute withdrawal syndrome.

Acute withdrawal syndrome may include, but not be limited to, the following signs and symptoms: body aches, fever, sweating, runny nose, sneezing, yawning, weakness, shivering or trembling, nervousness, or irritability, diarrhea, nausea or vomiting, abdominal cramps, increased blood pressure, and fast heartbeat.

Reactions resulting from administration of naloxone may appear within minutes of naloxone administration and subside in approximately 2 hours. Additionally, the opioid-related adverse reactions may subside within minutes of naloxone administration; the reactions may reappear in approximately 90 minutes, so it is imperative that the person experiencing an opioid-related overdose receive emergency medical care following naloxone administration.

Most often the symptoms of opioid depression and acute withdrawal syndrome are uncomfortable, but sometimes can be severe enough to require advanced medical attention.

Adverse reactions beyond opioid-related overdose are rare.

Educational Materials:

Educational materials about naloxone can be found at:

<http://dhhs.ne.gov/publichealth/PDM/P/Pages/Naloxone.aspx>

Effective Period for this Order:

This standing order will expire August 10, 2019

 8-10-18

Tom Safranek, M.D.

NPI# 1699867341

301 Centennial Mall South

Nebraska Department of Health and Human Services

Lincoln, NE 68509

(402) 471 – 2937 / (402) 471-0550

Notice of Nondiscrimination

The school district does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the nondiscrimination policies:

Name: Mrs. Brenda Totten
Title: Elementary Principal
Address: 400 S. 5th Street, PO Box 526, Lyons, NE 68038
Telephone: 402-687-2363
E-mail: btotten@lyonsdecaturschools.org

For further information on notice of nondiscrimination, visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the address and phone number of the office that serves your area or call 1-800-421-3481.

For additional prohibited discrimination and related information, please review school district Policy 3053 – Nondiscrimination.

RECORDS DISPOSITION REPORT

AGENCY
DIVISION
SUB-DIVISION

TO: SECRETARY OF STATE
 RECORDS MANAGEMENT DIVISION
 440 S. 8TH STREET, SUITE 210
 Lincoln, NE 68508-2294

REQUIRED INFORMATION:

In accordance with the Records Management Act, records of this agency have been disposed of under the authorization granted by the following schedule(s):

SCHEDULE NUMBER(S) ONLY (DO NOT INCLUDE SECTION AND ITEM NUMBERS)	TOTAL VOLUME DISPOSED (SEE REVERSE)

OPTIONAL INFORMATION (FOR YOUR USE ONLY):

You may include detailed information which will be useful to you in recording exactly what records were disposed of and under what authority. This might include such things as schedule section and item numbers, title of records, inclusive dates of records, etc. This information is not required to be filed with Records Management.

DATE	SIGNATURE
------	-----------

SEND ORIGINAL TO RECORDS MANAGEMENT. MAKE A PHOTOCOPY FOR YOUR RECORDS.

Lyons-Decatur Public Schools Usage Application and Agreement

Pursuant to Lyons-Decatur Public Schools ("District") board policy, the district permits patrons to use certain district facilities on an individual, non-commercial basis upon only one application and upon signing a release, waiver, and agreement. These facilities include: weight room, track, and gym (collectively, the "facilities"). All other facility uses must be approved pursuant to the District's facility use policies and practices.

Applicant Last Name	First Name	Middle Initial	
Street Address	City	State	Zip
Birth date: _____		Home Phone: _____	
Work Phone: _____		Cell: _____	
Name of Emergency Contact: _____			
• Home Phone: _____ Work : _____ Cell: _____			
• Relationship of Emergency Contact: _____			
• Email of Emergency Contact: _____			
Key # _____			

Rules and Regulations: By signing this Agreement, you acknowledge that the District may establish rules and regulations governing the conduct of guests using the facilities, and you agree to follow them. These include but are not limited to hours of availability, limitations on use of amenities and/or equipment, and limitation of access upon no notice to the Applicant.

Services and Access: The District agrees to provide you with use of the facilities and equipment available in the facilities. The District reserves the right to add or delete services, amenities, and hours. You will be provided a key to access the facilities. The annual cost for the key and access is \$_____.

Superior Interest in Usage. The primary use of the facilities is for District students and programs. The District reserves the right to close the facilities, in whole or any part, to outside use at any time and without notice to Applicant when, in the judgment of the District, it will benefit the students and programs of the District.

Compliance with Laws: In performing under this Agreement, all applicable governmental laws, regulations, orders, and other rules of duly-constituted authority will be followed and complied with in all respects by both parties. The Applicant understands this may limit access to the facilities with no notice provided to the Applicant.

Video Monitoring and Other Security Measures. The District uses security measures such as video cameras on its property and makes recordings as part of its security processes. Video cameras may be used in locations deemed appropriate by the District. The Applicant consents to these security measures.

RELEASE, WAIVER AND INDEMNIFICATION OF CLAIMS FOR USE OF THE SCHOOL DISTRICT'S FITNESS CENTER

I, the undersigned, have read this release and understand all its terms. I execute it voluntarily and with full knowledge of its significance. I UNDERSTAND THAT IT CONTAINS A RELEASE OF LIABILITY AND AN INDEMNIFICATION.

Declaration. I do hereby declare myself to be physically sound and suffering from no condition, impairment, or other illness that would prevent my safe participation or use of the facilities and equipment. I do further hereby acknowledge that I must obtain a Physician's approval for my participation in activities at the facilities, including the use of equipment. I acknowledge that I have either had a physical examination and have been given my Physician's permission to participate, OR that I have decided to utilize the facilities without the approval of a Physician and do hereby assume all responsibilities.

Acknowledgment of Risks. I understand and agree that fitness activities, equipment, and amenities available at the facilities may be strenuous and/or hazardous and I should contact a healthcare professional or doctor before beginning any activities. **I am voluntarily participating in these activities and using the facilities and equipment with full knowledge of the dangers involved.** I understand the risks associated with weight lifting and other available exercise amenities in the facilities, including cardiovascular and other fitness activities, and that those risks include, but are not limited to, the possibility of muscle strain, broken bones, back injury or head injury, which may be severe in nature and which could result in paralysis or even death. **I hereby agree to expressly and voluntarily assume and accept any and all risks of injury or death related to these activities.**

Release, Waiver and Indemnification. In consideration of permission granted by the District to use the District's facilities, and in the addition to any payment of any fees or charges, I do hereby waive, release and forever discharge the District, its board of education, officers, agents and employees from all actions, causes of action, damages, claims or demands that we, our heirs, executors, administrators, or assigns may have against the District and the parties named above for all personal injuries or loss of property which I incur by using the facilities and equipment or that otherwise result from my participation in any activities, whether such injuries are caused by my negligence or the negligence of the District or any of its employees, representatives, or volunteers. I agree to indemnify the District, its board of education, officers, agents, and employees and to pay for any costs, attorney fees, or awards that may result from resisting any complaint or lawsuit which I may bring against the above-named parties for any injury or loss I claim to have suffered.

Responsibility for Supervision. I understand that the facilities will be available to me only during hours designated by the administration, and that I am responsible for my own use of facilities and equipment at all times. I will inspect the facilities and equipment upon each visit before using any equipment. The District provides no training, supervision, or assistance.

Compliance with Rules. I agree to abide by all District rules, regulations, and policies now in force or that may be adopted in the future, and all directives given to me pertaining to the use of the fitness center.

THIS DOCUMENT CONTAINS A RELEASE, A WAIVER AND AN INDEMNIFICATION. READ IT CAREFULLY BEFORE SIGNING IT.

Clearly PRINT the following information:

Name: _____ Age: _____

Date: _____

Signature: _____

PARENT OR GUARDIAN IF USER IS UNDER AGE 19:

We, the undersigned, have read this Application and Release and understand all its terms. We execute it voluntarily and with full knowledge of its significance. WE UNDERSTAND THAT IT CONTAINS A RELEASE OF LIABILITY AND AN INDEMNIFICATION FOR OURSELVES AND OUR CHILD.

Clearly PRINT the following information:

Child's Name: _____ Child's Birthdate: _____

Father's Name: _____

Mother's Name: _____

Father's Signature: _____ Date: _____

Mother's Signature: _____ Date: _____

SERVICE ANIMAL REQUEST FORM

Date

School Building

Name of Assisted Person: _____

Assisted person is Staff Student Other

Name of Animal Owner (if different than above): _____

Name of Animal Handler (if different than above): _____

Name of Animal: _____ Type of Animal: Dog Miniature Horse

If it is not readily apparent that the animal qualifies as a "service animal," please answer the following questions:

Is use of the animal required because of a disability? Yes No

What work or task has the service animal been trained to perform?

I have read and understand the school district's Animals Policy. I will abide by the terms of that Policy. I understand that if the service animal is out of control, not housebroken, presents a direct and immediate threat to others in the school, or fundamentally alters the nature of the service, program, or activity that cannot be eliminated by reasonable modifications, the school district may exclude or remove my service animal from its property.

I agree to be responsible for any damage to school property or injury to personnel, students, or others caused by the animal. I agree to indemnify, defend, and hold harmless the school district from and against any and all claims, actions, suits, judgments and demands brought by any party arising on account of, or in connection with, any activity of or damage caused by my service animal.

Owner Signature

Date

Parent/Guardian Signature

Date

Assisted Person's Signature

Date

Handler Signature

Date

Please attach the following documentation:

- Proof of current licensure**
- Proof of current vaccinations and immunizations from a licensed veterinarian (as required by state and local law)**

APPROVAL

School Official Signature

Date

Title: _____

Note: This form is valid until the end of the current school year. It must be renewed prior to the start of each subsequent school year or whenever a different service animal will be used.

Title IX Written Appeal Decision

This report summarizes the appellate decision-maker's decision regarding the below-referenced formal complaint of sexual harassment. This determination was reached based upon the preponderance of the evidence.

Date grievance procedures initiated: [Insert the date of the initiation of the investigation.]

Date written determination issued: [Insert the date of the issuance of this determination]

Date written appeal decision issued: [Insert the date of the issuance of this determination]>>

Basis For Appeal

Procedural issue:

New evidence:

Bias/conflict of interest:

[These are the three mandatory grounds for allowing an appeal. Describe what the party appealing the determination has identified in the appropriate category.]

Procedural History

[You can use the procedural summary from the Decision-Maker's written determination. Then add the steps, if any, you have taken procedurally as the appellate decision-maker.]

Summary of Decision and Its Rationale

[You can quote from the initial decision or craft your own summary.]

Analysis Of Whether Outcome was Affected by Claimed Error

Factual Conclusions

[If the appeal alleges new facts, you should should carefully, and in detail, describe the factual conclusions that you are drawing about those limited facts without necessarily re-deciding all the factual issues resolved by the initial decision-maker.]

Effect of the Outcome of the Decision

[In this section, you must determine whether the outcome of the initial determination was affected by the claimed error. If not, the appeal can be dismissed.]

Appellate Decision

Grant or reject the appeal and state your rationale for doing so.

Appellate Decision-maker

Date



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Party's Name and Address]

[Party's Advisor's Name and Address (if any)]

Re: ***Evidence Subject to Inspection and Review***

Dear [Party and Advisor (if any)]:

As you know, the district is investigating a formal complaint of sexual harassment in which you were named as a party. Attached is the evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. Please note, this may include evidence upon which the district does not intend to rely in reaching a determination regarding responsibility.

Pursuant to board policy, you have ten days from the date of this communication to submit a written response to this evidence, which will be considered prior to completion of the investigative report. Any such written response should be submitted to [insert contact information for investigator.]

Sincerely,

[Signature Block]



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Individual's Name and Address]

Re: **Notice of Title IX Policy**

Dear [individual student/employee]:

The Lyons-Decatur Board of Education has adopted policy 3057 regarding Title IX, the prohibition against discrimination on the basis of sex, and grievance procedures for complaints. This policy is attached to this letter. By this letter, the school district is amending its previously distributed handbooks to include this policy, in full. If you received or printed a physical copy of the handbook, please attach this policy to your handbook. To the extent that any provision in the handbooks is in conflict with this policy, this policy will prevail.

Pursuant to this policy, the district does not discriminate on the basis of sex in any education programs, which extends to admission and employment. Inquiries about the application of Title IX and 34 C.F.R. part 106 to the district may be referred to the district's Title IX Coordinator, the assistant Secretary for Civil Rights of the United States Department of Education, or both.

The Title IX Coordinator is Mrs. Brenda Totten, who may be contacted in person, by mail, by telephone, or by electronic mail at 400S. 5th Street, PO Box 526, Lyons, NE 68038, or by phone at 402-687-2363, or by email at btotten@lyonsdecaturschools.org.

The assistant Secretary for Civil Rights of the United States Department of Education may be contacted at: U.S. Department of Education, Office for Civil Rights, Washington, D.C. 20202-1100.

Sincerely,

[Signature Block]



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Individual's Name and Address]

Re: **Notice of Title IX Policy**

Dear [individual student/employee]:

The Lyons-Decatur Board of Education has adopted policy 3057 regarding Title IX, the prohibition against discrimination on the basis of sex, and grievance procedures for complaints. **This policy is attached to this letter.** By this letter, the school district is amending its previously distributed handbooks to include this policy, in full. If you received or printed a physical copy of the handbook, please attach this policy to your handbook. To the extent that any provision in the handbooks is in conflict with this policy, this policy will prevail.

Pursuant to this policy, the district does not discriminate on the basis of sex in any education programs, which extends to admission and employment. Inquiries about the application of Title IX and 34 C.F.R. part 106 to the district may be referred to the district's Title IX Coordinator, the assistant Secretary for Civil Rights of the United States Department of Education, or both.

The Title IX Coordinator is Mrs. Brenda Totten, who may be contacted in person, by mail, by telephone, or by electronic mail at 400S. 5th Street, PO Box 526, Lyons, NE 68038, or by phone at 402-687-2363, or by email at btotten@lyonsdecaturschools.org.

The assistant Secretary for Civil Rights of the United States Department of Education may be contacted at: U.S. Department of Education, Office for Civil Rights, Washington, D.C. 20202-1100.

Sincerely,

[Signature Block]

[Place on District Letterhead]

[Date]

[Union and Union Official Name and Address]

Re: **Notice of Title IX Policy**

Dear [Union Official] and all members of the [insert name of employee organization]:

The Lyons-Decatur Board of Education has adopted policy 3057 regarding Title IX, the prohibition against discrimination on the basis of sex, and grievance procedures for complaints. This policy may be found on our website at: <https://meeting.sparqdata.com/Public/Organization/499>. This policy is also found published in our employee handbooks, distributed to all employees.

Pursuant to this policy, the district does not discriminate on the basis of sex in any education programs, which extends to admission and employment. Inquiries about the application of Title IX and 34 C.F.R. part 106 to the district may be referred to the district's Title IX Coordinator, the assistant Secretary for Civil Rights of the United States Department of Education, or both.

The Title IX Coordinator is Mrs. Brenda Totten, who may be contacted in person, by mail, by telephone, or by electronic mail at 400S. 5th Street, PO Box 526, Lyons, NE 68038, or by phone at 402-687-2363, or by email at btotten@lyonsdecaturschools.org.

The assistant Secretary for Civil Rights of the United States Department of Education may be contacted at: U.S. Department of Education, Office for Civil Rights, Washington, D.C. 20202-1100.

Sincerely,

[Signature Block]



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Complainant's Name and Address]

Re: ***Dismissal of Formal Complaint of Sexual Harassment***

Dear [Name]:

I am writing to inform you that the formal complaint of sexual harassment you filed against [insert name of respondent] was dismissed. After investigating the allegations in your complaint, the district determined that [Insert one or more of the following reasons for dismissing the complaint here: (1) *the conduct alleged in the formal complaint would not constitute sexual harassment as defined by federal law and board policy even if proved;* (2) *the conduct alleged did not occur in the district's education program or activity;* (3) *the conduct alleged did not occur against a person in the United States;* (4) *you, the complainant, notified the Title IX Coordinator in writing that you would like to withdraw the formal complaint or allegations therein;* (5) *the respondent is no longer enrolled or employed by the district;* or (6) *specific circumstances, including _____, prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Please note, reasons 1 through 3 are mandatory grounds for dismissal. Reasons 4 through 6 are permissive grounds for dismissal.*.]

Pursuant to board policy, you have the right to appeal the dismissal of your complaint on any of the following grounds:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding dismissal was made that could affect the outcome of the matter.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of this matter.

Appeals may only be initiated by submitting a written Notice of Appeal to the Office of the Superintendent of Schools within 10 calendar days of the date of this dismissal. The Notice of Appeal must include each of the following:

- The name of the party or parties making the appeal.
- The determination, dismissal, or portion thereof being appealed.
- A concise statement of the specific grounds upon which the appeal is based.

The failure to timely submit a Notice of Appeal will be deemed a waiver of your right to appeal under board policy, 34 C.F.R. part, 106, and Title IX. For your convenience, I've attached a copy of the school district's Title IX policy and grievance procedures.

Sincerely,

[Signature Block]



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Respondent's Name and Address]

Re: ***Dismissal of Formal Complaint of Sexual Harassment***

Dear [Name]:

I am writing to inform you that the formal complaint of sexual harassment filed against you by [insert name of Complainant] was dismissed. After investigating the allegations, the district determined that [Insert one or more of the following reasons for dismissing the complaint here: (1) *the conduct alleged in the formal complaint would not constitute sexual harassment as defined by federal law and board policy even if proved*; (2) *the conduct alleged did not occur in the district's education program or activity*; (3) *the conduct alleged did not occur against a person in the United States*; (4) *the complainant notified the Title IX Coordinator in writing to withdraw the formal complaint or allegations therein*; (5) *you, the respondent, are no longer enrolled or employed by the district*; or (6) *specific circumstances, including _____, prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Please note, reasons 1 through 3 are mandatory grounds for dismissal. Reasons 4 through 6 are permissive grounds for dismissal.*]

Pursuant to board policy, the Complainant is afforded the right to appeal the dismissal of this complaint on any of the following grounds:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding dismissal was made that could affect the outcome of the matter.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of this matter.

For your convenience, I've attached a copy of the school district's Title IX policy and grievance procedures.

Sincerely,

[Signature Block]

FORMAL COMPLAINT FORM

Formal complaints must be submitted by a complainant or the Title IX Coordinator. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Respondent means an individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. Formal Complaints must be filed with the Title IX Coordinator in accordance with board policy.

Complainant* _____

Respondent(s)* _____

Summary of Alleged Sexual Harassment (attach additional pages as needed)* _____

Location of Alleged Sexual Harassment _____

Date(s) of Alleged Sexual Harassment _____

Other Individuals with Relevant Information or Knowledge

Do You Request an Investigation* **Yes** **No**

Signature of Complainant or Title IX Coordinator *Date*

** Denotes a response which is required in order for the formal complaint to initiate the Title IX grievance procedures and investigatory process. All other fields are optional.*

This Formal Complaint form is provided for the convenience of those who wish to submit a formal complaint alleging sex harassment under Title IX. However, complainants are not required to submit formal complaints using this form. A formal complaint is any document alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment which bears the complainant's physical or digital signature or other indicia that the complainant is the individual submitting the complaint and is submitted to the Title IX Coordinator in person, by mail, by electronic mail, by delivery to the contact information provided for the Title IX Coordinator, or by other designated method of delivery.

Individuals alleging discrimination which does not constitute sex harassment under Title IX should refer to the district's general complaint and nondiscrimination policies.



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Complainant's Name and Address]

Re: ***Notice of Allegations and Grievance Process for Formal Complaints***

Dear [Name]:

I am writing to inform you that the district received and will be investigating the formal complaint of sexual harassment against [insert name of respondent] in which you were named as a complainant. Attached to this letter is a copy of the district's Title IX policy, which details the district's grievance procedures and the manner in which these allegations will be investigated and adjudicated.

The known parties involved in this incident include [Insert all parties, identifying whether each is a complainant or respondent. For example: *respondent John Doe.*] All parties are entitled to an advisor of their choice who may be, but is not required to be, an attorney, and who may be involved in the grievance process and inspect and review evidence as detailed by board policy.

The district will consider allegations that [insert the conduct allegedly constituting sexual harassment, including the date and location of the alleged incident(s), if known.] Respondents are presumed not responsible for alleged conduct, and a determination regarding responsibility is made only at the conclusion of the grievance process.

Pursuant to board policy, it is a violation of the student code of conduct to knowingly make a false statement or knowingly submit false information during the Title IX grievance process or any other school investigation. Pursuant to board policy, it is a violation of the student code of conduct to make a materially false statement in bad faith in the course of the Title IX grievance process or any other school investigation.

Sincerely,

[Signature Block]



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Respondent's Name and Address]

Re: ***Notice of Allegations and Grievance Process for Formal Complaints***

Dear [Name]:

I am writing to inform you that the district received and will be investigating a formal complaint of sexual harassment in which you were named as a Respondent. Attached to this letter is a copy of the district's Title IX policy, which details the district's grievance procedures and the manner in which these allegations will be processed, investigated and adjudicated.

The known parties involved in this incident include [Insert all parties, identifying whether each is a complainant or respondent. For example: *John Doe, respondent, Adam Jones, complainant.*] All parties are entitled to an advisor of their choice who may be, but is not required to be, an attorney, and who may be involved in the grievance process and inspect and review evidence as detailed by board policy.

The district will consider allegations that [insert the conduct allegedly constituting sexual harassment, including the date and location of the alleged incident(s), if known.] Respondents are presumed not responsible for alleged conduct, and a determination regarding responsibility is made at the conclusion of the grievance process.

Pursuant to board policy, it is a violation of the student code of conduct to knowingly make a false statement or knowingly submit false information during the Title IX grievance process or any other school investigation. Pursuant to board policy, it is a violation of the student code of conduct to make a materially false statement in bad faith in the course of the Title IX grievance process or any other school investigation.

Sincerely,

[Signature Block]

Title IX Investigative Report

This report summarizes the Lyons-Decatur's investigation into a formal complaint of sexual harassment.

Date grievance procedures initiated: [Insert the date of the initiation of the investigation.]

Date investigation concluded: [Insert the date of the conclusion of the investigation.]

Date of report: [Insert the date of the submission of the investigation report.]

Investigator: [Insert name of investigator.]

Decision Maker: [Insert name of decision maker.]

Procedural History

[**NOTE TO BE DELETED:** This section of the investigation report is **OPTIONAL**. However, we believe that including this information in the investigation report may make it easier for your decision-maker to issue a written determination which must include this section.]

[Here, describe the procedural steps taken from the receipt of the formal complaint through the issuance of this investigation report. This would include a description of notifications to parties, including the date such notification was provided, a description of the date, time, and place of interviews with parties and witnesses and site visits, and a description of the methods used or actions taken to gather other evidence.]

Summary of Evidence Collected

[Here, fairly summarize *all* relevant evidence, which should include all evidence that was provided to the parties and any evidence subsequently submitted by the parties in their written responses. However, relevant evidence never includes evidence regarding an individual's sexual predisposition and evidence about prior sexual behavior will only be relevant in very limited circumstances provided by the regulations. No further placeholders are provided below, because the evidence collected in each investigation will be unique and therefore an investigation report does not lend itself to a template format throughout.]



LYONS-DECATUR NORTHEAST

400 SOUTH 5TH PO BOX 526
LYONS, NEBRASKA 68038-0526
PHONE NUMBER: 402-687-2363
FAX NUMBER: 402-687-2472

[Date]

[Party's Name and Address]

Re: ***Notice of Interview***

Dear [Name]:

As you know, the district is investigating a formal complaint of sexual harassment in which you were named as a party. As part of this investigation, the district intends to interview you at [enter the date, time and location of the interview, recognizing that this notice must provide the party sufficient time to prepare for the interview, which we would normally say is at least 24 hours.]

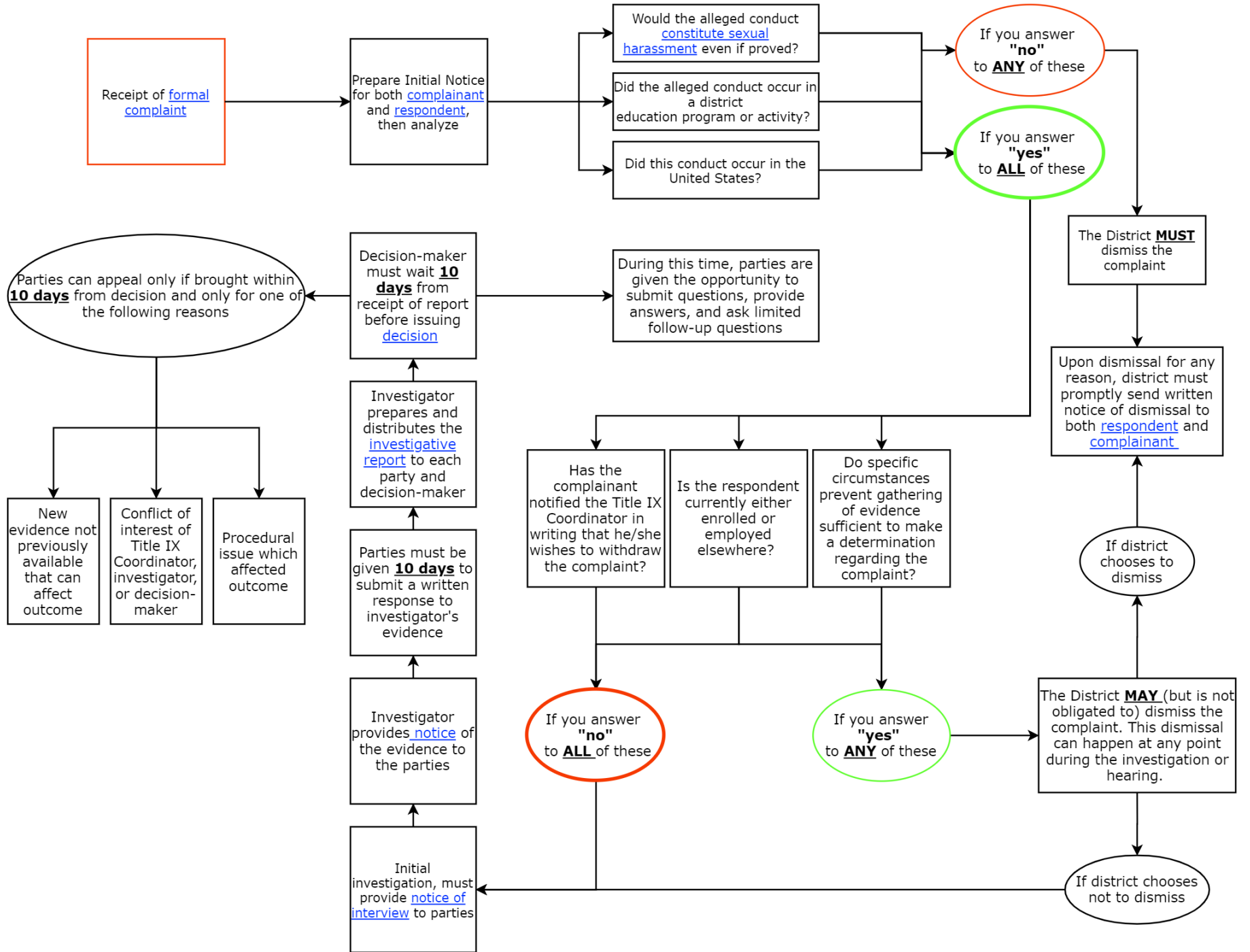
If you have an advisor, you are entitled to have him or her attend the interview. You should notify your advisor of this communication and the planned interview immediately. If you are unable to participate in the interview as scheduled, you must notify me immediately of your concerns.

Sincerely,

[Signature Block]



Title IX Grievance Process



FORMAL COMPLAINT FORM

Formal complaints must be submitted by a complainant or the Title IX Coordinator. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Respondent means an individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. Formal Complaints must be filed with the Title IX Coordinator in accordance with board policy.

Complainant* _____

Respondent(s)* _____

Summary of Alleged Sexual Harassment (attach additional pages as needed)* _____

Location of Alleged Sexual Harassment _____

Date(s) of Alleged Sexual Harassment _____

Other Individuals with Relevant Information or Knowledge

Do You Request an Investigation* Yes No

Signature of Complainant or Title IX Coordinator

Date

** Denotes a response which is required in order for the formal complaint to initiate the Title IX grievance procedures and investigatory process. All other fields are optional.*

This Formal Complaint form is provided for the convenience of those who wish to submit a formal complaint alleging sex harassment under Title IX. However, complainants are not required to submit formal complaints using this form. A formal complaint is any document alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment which bears the complainant's physical or digital signature or other indicia that the complainant is the individual submitting the complaint and is submitted to the Title IX Coordinator in person, by mail, by electronic mail, by delivery to the contact information provided for the Title IX Coordinator, or by other designated method of delivery.

Individuals alleging discrimination which does not constitute sex harassment under Title IX should refer to the district's general complaint and nondiscrimination policies.

[Place on District Letterhead]

[Date]

[Complainant's Name and Address]

Re: ***Notice of Allegations and Grievance Process for Formal Complaints***

Dear [Name]:

I am writing to inform you that the district received and will be investigating the formal complaint of sexual harassment against [insert name of respondent] in which you were named as a complainant. Attached to this letter is a copy of the district's Title IX policy, which details the district's grievance procedures and the manner in which these allegations will be investigated and adjudicated.

The known parties involved in this incident include [Insert all parties, identifying whether each is a complainant or respondent. For example: *respondent John Doe.*] All parties are entitled to an advisor of their choice who may be, but is not required to be, an attorney, and who may be involved in the grievance process and inspect and review evidence as detailed by board policy.

The district will consider allegations that [insert the conduct allegedly constituting sexual harassment, including the date and location of the alleged incident(s), if known.] Respondents are presumed not responsible for alleged conduct, and a determination regarding responsibility is made only at the conclusion of the grievance process.

[NOTE TO BE DELETED: ONLY INCLUDE THIS PARAGRAPH IF IT IS CONSISTENT WITH BOARD POLICY.]

Pursuant to board policy, it is a violation of the student code of conduct to knowingly make a false statement or knowingly submit false information during the Title IX grievance process or any other school investigation. Pursuant to board policy, it is a violation of the student code of conduct to make a materially false statement in bad faith in the course of the Title IX grievance process or any other school investigation.

Sincerely,

[Signature Block]

[Place on District Letterhead]

[Date]

[Respondent's Name and Address]

Re: ***Notice of Allegations and Grievance Process for Formal Complaints***

Dear [Name]:

I am writing to inform you that the district received and will be investigating a formal complaint of sexual harassment in which you were named as a Respondent. Attached to this letter is a copy of the district's Title IX policy, which details the district's grievance procedures and the manner in which these allegations will be processed, investigated and adjudicated.

The known parties involved in this incident include [Insert all parties, identifying whether each is a complainant or respondent. For example: *John Doe, respondent, Adam Jones, complainant.*] All parties are entitled to an advisor of their choice who may be, but is not required to be, an attorney, and who may be involved in the grievance process and inspect and review evidence as detailed by board policy.

The district will consider allegations that [insert the conduct allegedly constituting sexual harassment, including the date and location of the alleged incident(s), if known.] Respondents are presumed not responsible for alleged conduct, and a determination regarding responsibility is made at the conclusion of the grievance process.

[NOTE TO BE DELETED: ONLY INCLUDE THIS PARAGRAPH IF IT IS CONSISTENT WITH BOARD POLICY.]

Pursuant to board policy, it is a violation of the student code of conduct to knowingly make a false statement or knowingly submit false information during the Title IX grievance process or any other school investigation. Pursuant to board policy, it is a violation of the student code of conduct to make a materially false statement in bad faith in the course of the Title IX grievance process or any other school investigation.

Sincerely,

[Signature Block]

[Place on District Letterhead]

[Date]

[Complainant's Name and Address]

Re: ***Dismissal of Formal Complaint of Sexual Harassment***

Dear [Name]:

I am writing to inform you that the formal complaint of sexual harassment you filed against [insert name of respondent] was dismissed. After investigating the allegations in your complaint, the district determined that [Insert one or more of the following reasons for dismissing the complaint here: (1) the conduct alleged in the formal complaint would not constitute sexual harassment as defined by federal law and board policy even if proved; (2) the conduct alleged did not occur in the district's education program or activity; (3) the conduct alleged did not occur against a person in the United States; (4) you, the complainant, notified the Title IX Coordinator in writing that you would like to withdraw the formal complaint or allegations therein; (5) the respondent is no longer enrolled or employed by the district; or (6) specific circumstances, including _____, prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Please note, reasons 1 through 3 are mandatory grounds for dismissal. Reasons 4 through 6 are permissive grounds for dismissal.]

Pursuant to board policy, you have the right to appeal the dismissal of your complaint on any of the following grounds:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding dismissal was made that could affect the outcome of the matter.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of this matter.

Appeals may only be initiated by submitting a written Notice of Appeal to the Office of the Superintendent of Schools within 10 [Note to be deleted: check to see this is consistent with your district's policy] calendar days of the date of this dismissal. The Notice of Appeal must include each of the following:

- The name of the party or parties making the appeal.

- The determination, dismissal, or portion thereof being appealed.
- A concise statement of the specific grounds upon which the appeal is based.

The failure to timely submit a Notice of Appeal will be deemed a waiver of your right to appeal under board policy, 34 C.F.R. part, 106, and Title IX. For your convenience, I've attached a copy of the school district's Title IX policy and grievance procedures.

Sincerely,

[Signature Block]

[Place on District Letterhead]

[Date]

[Respondent's Name and Address]

Re: ***Dismissal of Formal Complaint of Sexual Harassment***

Dear [Name]:

I am writing to inform you that the formal complaint of sexual harassment filed against you by [insert name of Complainant] was dismissed. After investigating the allegations, the district determined that [Insert one or more of the following reasons for dismissing the complaint here: (1) *the conduct alleged in the formal complaint would not constitute sexual harassment as defined by federal law and board policy even if proved;* (2) *the conduct alleged did not occur in the district's education program or activity;* (3) *the conduct alleged did not occur against a person in the United States;* (4) *the complainant notified the Title IX Coordinator in writing to withdraw the formal complaint or allegations therein;* (5) *you, the respondent, are no longer enrolled or employed by the district;* or (6) *specific circumstances, including _____, prevent the district from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.* ***Please note, reasons 1 through 3 are mandatory grounds for dismissal. Reasons 4 through 6 are permissive grounds for dismissal.***]

Pursuant to board policy, the Complainant is afforded the right to appeal the dismissal of this complaint on any of the following grounds:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding dismissal was made that could affect the outcome of the matter.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of this matter.

For your convenience, I've attached a copy of the school district's Title IX policy and grievance procedures.

Sincerely,

[Signature Block]

[Place on District Letterhead]

[Date]

[Party's Name and Address]

Re: ***Notice of Interview***

Dear [Name]:

As you know, the district is investigating a formal complaint of sexual harassment in which you were named as a party. As part of this investigation, the district intends to interview you at [enter the date, time and location of the interview, recognizing that this notice must provide the party sufficient time to prepare for the interview, which we would normally say is at least 24 hours.]

If you have an advisor, you are entitled to have him or her attend the interview. You should notify your advisor of this communication and the planned interview immediately. If you are unable to participate in the interview as scheduled, you must notify me immediately of your concerns.

Sincerely,

[Signature Block]

[Place on District Letterhead]

[Date]

[Party's Name and Address]

[Party's Advisor's Name and Address (if any)]

Re: ***Evidence Subject to Inspection and Review***

Dear [Party and Advisor (if any)]:

As you know, the district is investigating a formal complaint of sexual harassment in which you were named as a party. Attached is the evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. Please note, this may include evidence upon which the district does not intend to rely in reaching a determination regarding responsibility.

Pursuant to board policy, you have ten days from the date of this communication to submit a written response to this evidence, which will be considered prior to completion of the investigative report. Any such written response should be submitted to [insert contact information for investigator.]

Sincerely,

[Signature Block]

Title IX Investigative Report

This report summarizes the [Insert the name of your district]'s investigation into a formal complaint of sexual harassment.

Date grievance procedures initiated: [Insert the date of the initiation of the investigation.]

Date investigation concluded: [Insert the date of the conclusion of the investigation.]

Date of report: [Insert the date of the submission of the investigation report.]

Investigator: [Insert name of investigator.]

Decision Maker: [Insert name of decision maker.]

Procedural History

[**NOTE TO BE DELETED:** This section of the investigation report is **OPTIONAL**. However, we believe that including this information in the investigation report may make it easier for your decision-maker to issue a written determination which must include this section.]

[Here, describe the procedural steps taken from the receipt of the formal complaint through the issuance of this investigation report. This would include a description of notifications to parties, including the date such notification was provided, a description of the date, time, and place of interviews with parties and witnesses and site visits, and a description of the methods used or actions taken to gather other evidence.]

Summary of Evidence Collected

[Here, fairly summarize *all* relevant evidence, which should include all evidence that was provided to the parties and any evidence subsequently submitted by the parties in their written responses. However, relevant evidence never includes evidence regarding an individual's sexual predisposition and evidence about prior sexual behavior will only be relevant in very limited circumstances provided by the regulations. No further placeholders are provided below, because the evidence collected in each investigation will be unique and therefore an investigation report does not lend itself to a template format throughout.]

Title IX Written Determination

This report summarizes the decision-maker's determination regarding the below-referenced formal complaint of sexual harassment. This determination was reached based upon the preponderance of the evidence.

Date grievance procedures initiated: [Insert the date of the initiation of the investigation.]

Date written determination issued: [Insert the date of the issuance of this determination]

Allegations Investigated

[Describe in detail the allegations that served as a basis for opening the investigation. Conclude with a determination that these allegations, if true, would constitute sexual harassment as defined by federal law and board policy.]

Procedural History

[You must include here a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence. Include the dates, times, and locations, as appropriate, in describing procedural steps.]

Findings of Fact

Based upon the evidence described above, the decision-maker makes the following findings based upon a preponderance of the evidence.

Credibility Determinations.

[For each individual identified as providing an interview, statement or report, the decision-maker should assess whether the individual was credible and whether the information they provided was reliable. In doing so, specifically describe the factual basis for reaching these conclusions. However, remember that credibility determinations cannot be based upon a parties' status as a complainant or respondent. Additionally, for all other evidence, assess its credibility and reliability based upon a specific discussion of its nature and source.]

Factual Conclusions.

[This section should carefully, and in detail, describe the factual conclusions of the decision-maker based upon the evidence. Wherever possible, describe the evidence, circumstances, or facts underlying the factual conclusion. This section should also discuss any evidence considered that is contrary to the decision-maker's conclusions, and provide an explanation for why that evidence was not found to be dispositive.]

In writing this section, the decision-maker should first lay out a narrative of how he/she believes the incident(s) unfolded. The decision-maker should then provide a conclusion as to whether the respondent subjected the complainant to sexual harassment as defined by federal law and board policy. In doing so, specifically provide why the conduct at issue meets the definition of sexual harassment.]

Summary of Findings by Allegation

[In this section, you should summarize your findings by summarize the conclusion for each allegation, including a clear determination of responsibility, and provide a summary of the rationale for that conclusion.]

Application of Code of Conduct

[In this section, you must determine whether the district's code of conduct applies to the facts you found and described above.]

Responsive Actions

Disciplinary Sanctions

[This section must provide a statement of, and rationale for, any disciplinary sanctions the district intends to impose upon the respondent.]

Remedies

[Describe here whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant.]

Right to Appeal

Each party has the opportunity to appeal the above determinations regarding responsibility, and from the district's dismissal of a formal complaint or any allegations therein, on the following grounds:

- Procedural irregularity that affected the outcome of the matter;

- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of this matter; or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals may only be initiated by submitting a written Notice of Appeal to the Office of the Superintendent of Schools within ten (10) calendar days of the date of this written determination of responsibility. The Notice of Appeal must include (a) the name of the party or parties making the appeal, (b) the determination, dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from subsection 5.8.2 below) upon which the appeal is based. A party's failure to timely submit a Notice of Appeal will be deemed a waiver of the party's right to appeal under board policy, 34 C.F.R. part, 106, and Title IX.

Decision-maker

Date

Sexual harassment occurs if:

An employee conditions the provision of an aid, benefit or service upon an individual's participation in unwelcome sexual conduct

A sexual assault occurs; sexual assault is defined as one of the following—

There is unwelcome conduct so severe, pervasive, and objectively offensive it effectively denies access to the district's education program or activity

There is dating violence, meaning violence committed by a person—

Stalking occurs, which means—

Domestic violence occurs, which is defined as—

Unlawful, non-forcible sexual intercourse including—

Any sexual act directed against another person, without the consent of the victim including—

Who is or has been in a social relationship of a romantic or intimate nature with the victim; the existence of such a relationship is determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved

Conduct directed at a specific person that would cause a reasonable person to 1) fear for his/her safety or the safety of others, or 2) suffer substantial emotional distress

Crimes of violence by:
1) a current/former spouse or intimate partner of the victim,
2) by someone with whom the victim shares a child,
3) someone who has lived with the victim,
4) someone similarly situated to a spouse of the victim, or
5) any person committing violence against someone else who is protected under domestic violence laws

Incest—non-forcible intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Statutory rape—non-forcible sexual intercourse with a person who is under the statutory age of consent

Rape—the carnal knowledge of the person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sodomy—oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault With An Object—to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Fondling—the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Consent means the willingness in fact for conduct to occur. An individual may, as a result of age, incapacity, disability, lack of information, or other circumstances be incapable of providing consent to some or all sexual conduct or activity. Neither verbal nor physical resistance is required to establish that an individual did not consent. District officials will consider the totality of the circumstances in determining whether there was consent for any specific conduct. Consent may be revoked or withdrawn at any time.

Title IX Written Determination

This report summarizes the decision-maker's determination regarding the below-referenced formal complaint of sexual harassment. This determination was reached based upon the preponderance of the evidence.

Date grievance procedures initiated: [Insert the date of the initiation of the investigation.]

Date written determination issued: [Insert the date of the issuance of this determination]

Allegations Investigated

[Describe in detail the allegations that served as a basis for opening the investigation. Conclude with a determination that these allegations, if true, would constitute sexual harassment as defined by federal law and board policy.]

Procedural History

[You must include here a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence. Include the dates, times, and locations, as appropriate, in describing procedural steps.]

Findings of Fact

Based upon the evidence described above, the decision-maker makes the following findings based upon a preponderance of the evidence.

Credibility Determinations.

[For each individual identified as providing an interview, statement or report, the decision-maker should assess whether the individual was credible and whether the information they provided was reliable. In doing so, specifically describe the factual basis for reaching these conclusions. However, remember that credibility determinations cannot be based upon a parties' status as a complainant or respondent. Additionally, for all other evidence, assess its credibility and reliability based upon a specific discussion of its nature and source.]

Factual Conclusions.

[This section should carefully, and in detail, describe the factual conclusions of the decision-maker based upon the evidence. Wherever possible, describe the evidence, circumstances, or facts underlying the factual conclusion. This section should also discuss any evidence considered that is contrary to the decision-maker's conclusions, and provide an explanation for why that evidence was not found to be dispositive.]

In writing this section, the decision-maker should first lay out a narrative of how he/she believes the incident(s) unfolded. The decision-maker should then provide a conclusion as to whether the respondent subjected the complainant to sexual harassment as defined by federal law and board policy. In doing so, specifically provide why the conduct at issue meets the definition of sexual harassment.]

Summary of Findings by Allegation

[In this section, you should summarize your findings by summarize the conclusion for each allegation, including a clear determination of responsibility, and provide a summary of the rationale for that conclusion.]

Application of Code of Conduct

[In this section, you must determine whether the district's code of conduct applies to the facts you found and described above.]

Responsive Actions

Disciplinary Sanctions

[This section must provide a statement of, and rationale for, any disciplinary sanctions the district intends to impose upon the respondent.]

Remedies

[Describe here whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the complainant.]

Right to Appeal

Each party has the opportunity to appeal the above determinations regarding responsibility, and from the district's dismissal of a formal complaint or any allegations therein, on the following grounds:

- Procedural irregularity that affected the outcome of the matter;

- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of this matter; or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals may only be initiated by submitting a written Notice of Appeal to the Office of the Superintendent of Schools within ten (10) calendar days of the date of this written determination of responsibility. The Notice of Appeal must include (a) the name of the party or parties making the appeal, (b) the determination, dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from subsection 5.8.2 below) upon which the appeal is based. A party's failure to timely submit a Notice of Appeal will be deemed a waiver of the party's right to appeal under board policy, 34 C.F.R. part, 106, and Title IX.

Decision-maker

Date

Romans, Wiemer & Associates, CPA's, P.C.
1910 N Lincoln Avenue
York, Nebraska 68467

This representation letter is provided in connection with your audit of the financial statements of School District No. 11-0020, of Lyons, Nebraska, which comprise the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information as of August 31, 2021, and the respective changes in financial position, and the disclosures (collectively, the "financial statements"), for the purpose of expressing opinions as to whether the financial statements are presented fairly, in all material respects, in accordance with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

We confirm, to the best of our knowledge and belief, as of October 21, 2021, the following representations made to you during your audit.

Financial Statements

1. We have fulfilled our responsibilities, as set out in terms of the audit engagement letter dated August 11, 2021, including our responsibility for the preparation and fair presentation of the financial statements in accordance with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America and for preparation of the supplementary information in accordance with the applicable criteria.
2. The financial statements referred to above are fairly presented in conformity with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America and include all properly classified funds and other financial information of the primary government and all component units required by generally accepted accounting principles to be included in the financial reporting entity.

3. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
4. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
5. Significant assumptions we used in making accounting estimates including those measured at fair value, are reasonable.
6. Related party relationships and transactions, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been appropriately accounted for and disclosed in accordance with the requirements of the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.
7. Adjustments or disclosures have been made for all events, including instances of noncompliance subsequent to the date of the financial statements and for which the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America would require adjustment to or disclosure in the financial statements.
8. The effects of uncorrected misstatements are immaterial, both individually and in the aggregate, to the financial statements as a whole for each opinion unit. A list of the uncorrected misstatements is attached to the representation letter.
9. The effects of all known actual or possible litigation, claims, and assessments have been accounted for and disclosed in accordance with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.
10. Guarantees, whether written or oral, under which the School District No. 11-0020, of Lyons, Nebraska is contingently liable, if any, have been properly recorded or disclosed.

Information Provided

11. We have provided you with:
 - a. Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements, such as records, (including information obtained from outside of the general and subsidiary ledgers), documentation, and other matters.
 - b. Additional information that you have requested from us for the purpose of the audit.

- c. Unrestricted access to persons within the School District from whom you determined it necessary to obtain audit evidence.
 - d. Minutes of the meetings of the Board of Education or summaries of actions of recent meetings for which minutes have not yet been prepared.
- 12. All material transactions have been recorded in the accounting records and are reflected in the financial statements.
- 13. We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- 14. We have no knowledge of any fraud or suspected fraud that affects the School District and involves:
 - a. Management,
 - b. Employees who have significant roles in internal control, or
 - c. Others where the fraud could have a material effect on the financial statements.
- 15. We have no knowledge of any allegations of fraud or suspected fraud affecting the School District's financial statements communicated by employees, former employees, regulators, or others.
- 16. We have no knowledge of instances of noncompliance or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements, or waste or abuse, whose effects should be considered when preparing financial statements.
- 17. We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
- 18. We have disclosed to you the names of the School District's related parties and all the related party relationships and transactions, including any side agreements.

Government-specific

- 19. There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
- 20. We have a process to track the status of audit findings and recommendations.
- 21. We have identified to you any previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.

22. We have identified to you any investigations or legal proceedings that have been initiated with respect to the period under audit
23. We have provided our views on reported findings, conclusions, and recommendations, as well as our planned corrective actions, for the report.
24. The School District has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, fund balance or net position.
25. We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us, including tax or debt limits and debt contracts, and legal and contractual provisions for reporting specific activities in separate funds.
26. We have identified and disclosed to you all instances of identified and suspected fraud and noncompliance with provisions of laws and regulations, contracts, and grant agreements that we believe have a material effect on the financial statements.
27. There are no violations or possible violations of budget ordinances, laws and regulations (including those pertaining to adopting, approving, and amending budgets), provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the modified cash basis financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.
28. As part of your audit, you assisted with preparation of the modified cash basis financial statements and disclosures. We acknowledge our responsibility as it relates to those nonaudit services, including that we assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services. We have reviewed, approved, and accepted responsibility for those financial statements and disclosures.
29. The School District has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral.
30. The School District has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
31. The modified cash basis financial statements include all component units, appropriately present majority equity interest in legally separate organizations and joint ventures with an equity interest, and properly disclose all other joint ventures and other related organizations.
32. The financial statements include all fiduciary activities required by GASBS No. 84.

33. The modified cash basis financial statements properly classify all funds and activities in accordance with GASB Statement No. 34, as amended.
34. All funds that meet the quantitative criteria in GASB Statement Nos. 34 and 37 for presentation as major are identified and presented as such and all other funds that are presented as major are particularly important to modified cash basis financial statement users.
35. Components of net position (net investment in capital assets; restricted; and unrestricted) and classifications of fund balance (nonspendable, restricted, committed, assigned and unassigned) are properly classified and, if applicable, approved.
36. Provisions for uncollectible receivables have been properly identified and recorded.
37. Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
38. Revenues are appropriately classified in the statement of activities within program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.
39. Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.
40. Deposits and investment securities and derivative instruments are properly classified as to risk and are properly disclosed.
41. We have appropriately disclosed the School District's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available and have determined that net position is properly recognized under the policy.
42. We are following our established accounting policy regarding which resources (that is, restricted, committed, assigned, or unassigned) are considered to be spent first for expenditures for which more than one resource classification is available. That policy determines the fund balance classifications for financial reporting purposes.
43. With respect to [the Management's Discussion and Analysis and] the Budgetary Comparison Schedules:
 - a. We acknowledge our responsibility for presenting [the Management's Discussion and Analysis and] the Budgetary Comparison Schedules in accordance with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America, and we believe [the Management's Discussion and Analysis and] the Budgetary Comparison Schedules, including {its/their} form and content, {are/is}

fairly presented in accordance with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The methods of measurement and presentation of [the Management's Discussion and Analysis and] the Budgetary Comparison Schedules have not changed from those used in the prior period, and we have disclosed to you any significant assumptions or interpretations underlying the measurement and presentation of the supplementary information.

- b. If [the Management's Discussion and Analysis and] the Budgetary Comparison Schedules {are/is} not presented with the audited financial statements, we will make the audited financial statements readily available to the intended users of the supplementary information no later than the date we issue the supplementary information and the auditor's report thereon.

Signed: Lindsay Beaudette
Title: Superintendent
Date: October 21, 2021

Signed: Beth Doherty
Title: Business Manager
Date: October 21, 2021

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA

FINANCIAL STATEMENTS
FOR THE YEAR ENDED AUGUST 31, 2021

ROMANS, WIEMER & ASSOCIATES

Certified Public Accountants, P.C.

Steven D. Wiemer, CPA

Gayle D. Steiger, CPA

Members American Institute of Certified Public Accountants

Nebraska Society of Certified Public Accountants

1910 N. Lincoln Avenue • York, Nebraska 68467

(402) 362-5597 • FAX (402) 362-2173

rwacpas@windstream.net

October 21, 2021

Board of Education
School District No. 11-0020
Lyons, Nebraska 68038

In planning and performing our audit of the financial statements of the governmental activities, each major fund and the aggregate remaining fund information of School District No. 11-0020, Lyons, Nebraska as of and for the year ended August 31, 2021, in accordance with auditing standards generally accepted in the United States of America, we considered School District No. 11-0020, Lyons, Nebraska's internal control over financial reporting (internal control) as a basis for designing auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of School District No. 11-0020, Lyons, Nebraska's internal control. Accordingly, we do not express an opinion on the effectiveness of School District No. 11-0020, Lyons, Nebraska's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in the internal control that might be material weaknesses or significant deficiencies and therefore material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected, on a timely basis. We consider the following deficiencies in School District No. 11-0020, Lyons, Nebraska's internal control to be material weaknesses:

Due to the size of School District No. 11-0020, Lyons, Nebraska, there is virtually no internal control structure design. While all the general transactions are approved by the Board of Education, adequate personnel are not available to assign responsibilities in such a way that different employees handle different parts of the same transaction. Authorization or approval of transactions, recording of transactions, and custody of assets should normally be segregated activities.

A significant deficiency is a deficiency, or combination of deficiencies in internal control, that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Page 2

School District No. 11-0020, Lyons, Nebraska

This communication is intended solely for the information and use of management, the Board of Education, and others within the organization, and is not intended to be and should not be used by anyone other than these specified parties.

ROMANS WIEMER & ASSOCIATES
ROMANS, WIEMER & ASSOCIATES,
Certified Public Accountants, P.C.

RWA: klz

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA

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October 21, 2021

Independent Auditor's Report

Board of Education
School District No. 11-0020
Lyons, Nebraska 68038

Report to the Financial Statements

We have audited the accompanying modified cash basis financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of School District No. 11-0020 of Lyons, Nebraska, as of and for the year ended August 31, 2021, and the related notes to the financial statements, which collectively comprise the School District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting described in Note 1; this includes determining that the modified cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting

Independent Auditor's Report

School District No. 11-0020, Lyons, Nebraska

policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective modified cash basis financial position of the governmental activities, each major fund, and the aggregate remaining fund information of School District No. 11-0020 of Lyons, Nebraska, as of August 31, 2021, and the respective changes in modified cash basis financial position thereof for the year then ended in accordance with the modified cash basis of accounting as described in Note 1.

Basis of Accounting

We draw attention to Note 1 of the financial statements, which describes the basis of accounting. The financial statements are prepared on the modified cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinions are not modified with respect to that matter.

Other Matters

Other Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise School District No. 11-0020 of Lyons, Nebraska's basic financial statements. The supplementary and other information as listed in the table of contents are presented for purposes of additional analysis and are not a required part of the basic financial statements.

Schedules A through L are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplementary information described in the first sentence of this paragraph is fairly stated in all material respects in relation to the basic financial statements as a whole.

Independent Auditor's Report

School District No. 11-0020, Lyons, Nebraska

Schedules M through O have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we do not express an opinion or provide any assurance on them.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated October 21, 2021, on our consideration of School District No. 11-0020 of Lyons, Nebraska's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of School District No. 11-0020 of Lyons, Nebraska's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering School District No. 11-0020 of Lyons, Nebraska's internal control over financial reporting and compliance.

Romans Wiemer & Associates
ROMANS, WIEMER & ASSOCIATES,
Certified Public Accountants, P.C.

RWA: klz

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
STATEMENT OF NET POSITION - MODIFIED CASH BASIS
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Governmental Activities</u>
Assets:	
Cash and Deposits	\$ 2,550,355.96
County Treasurers' Balance	<u>836,267.94</u>
Total Assets	<u>\$ 3,386,623.90</u>
 Liabilities	 <u>\$ 0.00</u>
 Net Position: Unrestricted	 <u>\$ 3,386,623.90</u>

See Accompanying Notes to the Financial Statements

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
STATEMENT OF ACTIVITIES - MODIFIED CASH BASIS
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Cash</u>	<u>Program Cash Receipts</u>	
	<u>Disbursements</u>	<u>Charges for</u>	<u>Operating</u>
		<u>Services</u>	<u>Grants and</u>
			<u>Contributions</u>
Governmental Activities:			
Regular Instruction Programs	\$ (1,997,406.55)		
Early Childhood Educational Programs	(90,330.21)		
Special Education Instruction	(648,909.00)		\$ 296,557.00
Special Education Instructional Programs - Ages 3-5	(21.98)		
Guidance Services	(100,919.21)		
Health Services	(10,628.21)		
Psychological Services: SPED School Age	(9,726.38)		
Speech Pathology & Audiology Services: SPED School Age	(64,719.35)		
Speech Pathology & Audiology Services: SPED Ages 3-5	(557.91)		
Speech Pathology & Audiology Services: SPED Ages 0-2	(131.55)		
Occupational Therapy - Related Services: SPED School Age	(6,205.42)		
Occupational Therapy - Related Services: SPED Ages 3-5	(255.91)		
Physical Therapy - Related Services: SPED School Age	(6,244.48)		
Visually Impaired - Related Services: SPED School Age	(4,743.63)		
Support Services - Other	(212,532.33)		
Improvement of Instruction	(660.79)		
Instruction and Curriculum Development	(996.33)		
Instructional Staff Training	(1,950.05)		
Library/Media Services	(133,355.67)		
Audio-Visual Services	(357.87)		
Instruction-Related Technology	(119,616.65)		
Board of Education	(26,866.08)		
Executive Administration Services	(207,283.63)		
District Legal Services	(8,580.64)		
Office of Principal	(292,882.62)		
Fiscal Services	(94,438.83)		
Purchasing Services	(74,314.74)		
Printing, Publishing & Duplicating Services	(4,192.74)		
Public Information Services	(450.00)		
(Continued)			

See Accompanying Notes to the Financial Statements

Net
Disbursements
Receipts and
Changes in
Net Position

\$ (1,997,406.55)
(90,330.21)
(352,352.00)
(21.98)
(100,919.21)
(10,628.21)
(9,726.38)

(64,719.35)

(557.91)

(131.55)

(6,205.42)

(255.91)

(6,244.48)

(4,743.63)
(212,532.33)
(660.79)
(996.33)
(1,950.05)
(133,355.67)
(357.87)
(119,616.65)
(26,866.08)
(207,283.63)
(8,580.64)
(292,882.62)
(94,438.83)
(74,314.74)
(4,192.74)
(450.00)

See Accompanying Notes to the Financial Statements

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
STATEMENT OF ACTIVITIES - MODIFIED CASH BASIS
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Program Cash Receipts</u>		
	<u>Cash</u> <u>Disbursements</u>	<u>Charges for</u> <u>Services</u>	<u>Operating</u> <u>Grants and</u> <u>Contributions</u>
Governmental Activities: (Continued)			
Personnel Services	\$ (44,499.56)		
Administrative Technology Services	(252.91)		
Central Services	(2,611.56)		
Operation of Buildings	(364,296.09)		
Maintenance of Buildings	(132,254.31)		
Care & Upkeep of Grounds	(30,136.97)		
Care & Upkeep of Equipment	(2,912.00)		
Vehicle Operation, Maintenance & Purchasing	(2,601.18)		
Security	(3,625.63)		
Safety	(4,255.65)		
Vehicle Operation & Purchasing - Regular Education	(101,208.22)		
Vehicle Operation & Purchasing - School Age SPED	(63,665.67)		\$ 28,833.00
Vehicle Servicing & Maintenance - Regular Education	(14,898.32)		
Vehicle Servicing & Maintenance - School Age SPED	(5,385.54)		
State Categorical Programs	(43,496.34)		33,689.00
Federal Programs	(360,845.66)		381,140.54
Other Purchased Services	(3,860.50)		
Student Activities	(63,372.54)	\$ 77,974.37	
Summer School	(3,205.00)	3,264.87	
Other Purchased Services and Supplies	(57,956.55)	59,697.11	
Employee Benefits	(1,958.50)		
School Nutrition	(211,902.52)	25,600.88	184,074.79
Capital Outlay	(199,853.62)		
Net Program (Disbursements)			
Receipts	<u>\$ (5,838,333.60)</u>	<u>\$ 166,537.23</u>	<u>\$ 924,294.33</u>

See Accompanying Notes to the Financial Statements

Net
Disbursements
Receipts and
Changes in
Net Position

\$ (44,499.56)
(252.91)
(2,611.56)
(364,296.09)
(132,254.31)
(30,136.97)
(2,912.00)
(2,601.18)
(3,625.63)
(4,255.65)
(101,208.22)
(34,832.67)
(14,898.32)
(5,385.54)
(9,807.34)
20,294.88
(3,860.50)
14,601.83
59.87
1,740.56
(1,958.50)
(2,226.85)

(199,853.62)

\$ (4,747,502.04)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
STATEMENT OF ACTIVITIES - MODIFIED CASH BASIS
FOR THE YEAR ENDED AUGUST 31, 2021

	Program Cash Receipts		
	Cash Disbursements	Charges for Services	Operating Grants and Contributions
General Receipts:			
Local Receipts			
County Receipts			
State Receipts			
Investment Income			
Other			
 Total General Receipts			
 Changes in Net Position			
 Net Position - Beginning			
 Net Position - Ending			

Net
Disbursements
Receipts and
Changes in
Net Position

\$ 3,786,148.40
13,970.26
499,699.18
5,799.77
8,238.42

\$ 4,313,856.03

\$ (433,646.01)

3,820,269.91

\$ 3,386,623.90

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
STATEMENT OF MODIFIED CASH BASIS ASSETS AND FUND BALANCES AND
MODIFIED CASH RECEIPTS, DISBURSEMENTS AND CHANGES IN MODIFIED CASH BASIS
FUND BALANCES - GOVERNMENTAL FUNDS
AS OF AND FOR THE YEAR ENDED AUGUST 31, 2021

	Major Funds		
	General Fund	Special Building Fund	Depreciation Fund
Receipts:			
Local Receipts	\$ 3,785,983.26	\$ 165.14	
County Receipts	13,970.26		
State Receipts	858,778.18		
Federal Receipts	381,140.54		
Sales of Meals			
Investment Income	4,294.54	1,102.81	\$ 318.82
Non-Revenue Receipts	8,238.42		
Total Receipts	\$ 5,052,405.20	\$ 1,267.95	\$ 318.82
Disbursements:			
Regular Instruction Programs	\$ 1,997,406.55		
Early Childhood Educational Programs	90,330.21		
Special Education Instruction	648,909.00		
Special Education Instructional Programs - Ages 3-5	21.98		
Guidance Services	100,919.21		
Health Services	10,628.21		
Psychological Services: SPED School Age	9,726.38		
Speech Pathology & Audiology Services: SPED School Age	64,719.35		
Speech Pathology & Audiology Services: SPED Ages 3-5	557.91		
Speech Pathology & Audiology Services: SPED Ages 0-2	131.55		
Occupational Therapy - Related Services: SPED School Age	6,205.42		
Occupational Therapy - Related Services: SPED Ages 3-5	255.91		
Physical Therapy - Related Services: SPED School Age	6,244.48		
Visually Impaired - Related Services: SPED School Age	4,743.63		
Support Services - Other	212,532.33		
Improvement of Instruction	660.79		
Instruction and Curriculum Development	996.33		
(Continued)			

See Accompanying Notes to the Financial Statements

Employee Benefit Fund	Activities Fund	Cooperative Fund	Student Fee Fund	School Nutrition Fund	Total Governmental Funds
	\$ 77,974.37	\$ 59,697.11	\$ 3,264.87		\$ 3,927,084.75
					13,970.26
				\$ 1,591.77	860,369.95
				182,483.02	563,623.56
				25,600.88	25,600.88
	83.60				5,799.77
					8,238.42
<u>\$ 0.00</u>	<u>\$ 78,057.97</u>	<u>\$ 59,697.11</u>	<u>\$ 3,264.87</u>	<u>\$ 209,675.67</u>	<u>\$ 5,404,687.59</u>
					\$ 1,997,406.55
					90,330.21
					648,909.00
					21.98
					100,919.21
					10,628.21
					9,726.38
					64,719.35
					557.91
					131.55
					6,205.42
					255.91
					6,244.48
					4,743.63
					212,532.33
					660.79
					996.33

See Accompanying Notes to the Financial Statements

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
STATEMENT OF MODIFIED CASH BASIS ASSETS AND FUND BALANCES AND
MODIFIED CASH RECEIPTS, DISBURSEMENTS AND CHANGES IN MODIFIED CASH BASIS
FUND BALANCES - GOVERNMENTAL FUNDS
AS OF AND FOR THE YEAR ENDED AUGUST 31, 2021

	Major Funds		
	General Fund	Special Building Fund	Depreciation Fund
Disbursements: (Continued)			
Instructional Staff Training	\$ 1,950.05		
Library/Media Services	133,355.67		
Audio-Visual Services	357.87		
Instruction-Related Technology	119,616.65		
Board of Education	26,866.08		
Executive Administration Services	207,283.63		
District Legal Services	8,580.64		
Office of Principal	292,882.62		
Fiscal Services	94,438.83		
Purchasing Services	74,314.74		
Printing, Publishing & Duplicating Services	4,192.74		
Public Information Services	450.00		
Personnel Services	44,499.56		
Administrative Technology Services	252.91		
Central Services	2,611.56		
Operation of Buildings	364,296.09		
Maintenance of Buildings	132,254.31		
Care & Upkeep of Grounds	30,136.97		
Care & Upkeep of Equipment	2,912.00		
Vehicle Operation, Maintenance & Purchasing	2,601.18		
Security	3,625.63		
Safety	4,255.65		
Vehicle Operation & Purchasing - Regular Education	101,208.22		
Vehicle Operation & Purchasing - School Age SPED	63,665.67		
Vehicle Servicing & Maintenance - Regular Education	14,898.32		
Vehicle Servicing & Maintenance - School Age SPED	5,385.54		
State Categorical Programs	43,496.34		
Federal Programs	360,845.66		
Other Purchased Services		\$ 3,860.50	
Student Activities			
Summer School			
Other Purchased Services and Supplies			
(Continued)			

See Accompanying Notes to the Financial Statements

Employee Benefit Fund	Activities Fund	Cooperative Fund	Student Fee Fund	School Nutrition Fund	Total Governmental Funds
					\$ 1,950.05
					133,355.67
					357.87
					119,616.65
					26,866.08
					207,283.63
					8,580.64
					292,882.62
					94,438.83
					74,314.74
					4,192.74
					450.00
					44,499.56
					252.91
					2,611.56
					364,296.09
					132,254.31
					30,136.97
					2,912.00
					2,601.18
					3,625.63
					4,255.65
					101,208.22
					63,665.67
					14,898.32
					5,385.54
					43,496.34
					360,845.66
					3,860.50
	\$ 63,372.54				63,372.54
			\$ 3,205.00		3,205.00
		\$ 57,956.55			57,956.55

See Accompanying Notes to the Financial Statements

SCHOOL DISTRICT NO. 11-0020

LYONS, NEBRASKA

**STATEMENT OF MODIFIED CASH BASIS ASSETS AND FUND BALANCES AND
MODIFIED CASH RECEIPTS, DISBURSEMENTS AND CHANGES IN MODIFIED CASH BASIS
FUND BALANCES - GOVERNMENTAL FUNDS
AS OF AND FOR THE YEAR ENDED AUGUST 31, 2021**

	Major Funds		
	General Fund	Special Building Fund	Depreciation Fund
Disbursements: (Continued)			
Employee Benefits			
School Nutrition			
Capital Outlay		\$ 114,948.33	\$ 84,771.00
Total Disbursements	\$ 5,296,224.37	\$ 118,808.83	\$ 84,771.00
Excess (Deficiency) of Receipts over Disbursements	\$ (243,819.17)	\$ (117,540.88)	\$ (84,452.18)
Modified Cash Basis Fund Balance - Beginning of Year	2,248,722.95	1,230,140.39	197,292.54
Modified Cash Basis Fund Balance - End of Year	\$ 2,004,903.78	\$ 1,112,599.51	\$ 112,840.36
Assets			
Cash and Deposits	\$ 1,168,635.84	\$ 1,112,599.51	\$ 112,840.36
County Treasurers' Balance	836,267.94		
Total Assets	\$ 2,004,903.78	\$ 1,112,599.51	\$ 112,840.36
Fund Balances			
Assigned		\$ 1,112,599.51	\$ 112,840.36
Unassigned	\$ 2,004,903.78		
Total Fund Balances	\$ 2,004,903.78	\$ 1,112,599.51	\$ 112,840.36

See Accompanying Notes to the Financial Statements

Employee Benefit Fund	Activities Fund	Cooperative Fund	Student Fee Fund	School Nutrition Fund	Total Governmental Funds
\$ 1,958.50				\$ 211,902.52 134.29	\$ 1,958.50 211,902.52 199,853.62
\$ 1,958.50	\$ 63,372.54	\$ 57,956.55	\$ 3,205.00	\$ 212,036.81	\$ 5,838,333.60
\$ (1,958.50)	\$ 14,685.43	\$ 1,740.56	\$ 59.87	\$ (2,361.14)	\$ (433,646.01)
21,488.00	69,280.13	180.37	(59.87)	53,225.40	3,820,269.91
\$ 19,529.50	\$ 83,965.56	\$ 1,920.93	\$ 0.00	\$ 50,864.26	\$ 3,386,623.90
\$ 19,529.50	\$ 83,965.56	\$ 1,920.93	\$ 0.00	\$ 50,864.26	\$ 2,550,355.96 836,267.94
\$ 19,529.50	\$ 83,965.56	\$ 1,920.93	\$ 0.00	\$ 50,864.26	\$ 3,386,623.90
\$ 19,529.50	\$ 83,965.56	\$ 1,920.93	\$ 0.00	\$ 50,864.26	\$ 1,381,720.12 2,004,903.78
\$ 19,529.50	\$ 83,965.56	\$ 1,920.93	\$ 0.00	\$ 50,864.26	\$ 3,386,623.90

See Accompanying Notes to the Financial Statements

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 1

Significant Accounting Policies

The accounting policies of School District No. 11-0020, Lyons, Nebraska conform to the uniform system of accounting as prescribed by the Nebraska State Department of Education.

A. **Fund Accounting**

The accounts of the School District are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund balances, receipts collected and disbursements paid. The School District resources are allocated to and accounted for in individual funds based on the purposes for which they are to be spent and the means by which spending activities are controlled.

Fund Types:

General Fund - This fund is the operating fund of the District. It is used to account for all financing resources except those required to be accounted for in other funds.

Depreciation Fund - This fund is used to facilitate the eventual purchase of costly capital outlay.

Employee Benefit Fund - This fund is used to specifically reserve General Fund money for the benefit of school district employees.

Activities Fund - This fund is used to account for assets held by the District in a trustee capacity for various school organizations and activities.

School Nutrition Fund - This fund accounts for the operations of the District's Nutrition Program.

Special Building Fund - This fund accounts for taxes levied and other receipts specifically maintained to acquire or improve sites and/or to erect, alter or improve buildings.

Cooperative Fund – This fund is used by the school acting as the fiscal agent for any cooperative activity between one or more public agencies.

The Student Fee Fund – This fund as authorized by statute, is a separate school district fund not funded by tax receipts into which all money collected from students pursuant to the Public Elementary and Secondary Student Fee Authorization Act must be deposited. Included are fees for Extracurricular Activities, Postsecondary Education and Summer or Night School. Disbursements from this Fund must be for the purpose for which the fees were collected.

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 1

Significant Accounting Policies (Continued)

B. Basis of Accounting

The School District's policy is to prepare its financial statements on the basis of cash receipts and disbursements, which is consistent with the Commissioner of Education and Nebraska Department of Education requirements. Consequently certain receipts and the related assets are recognized when received rather than when earned, and certain disbursements are recognized when paid rather than when the obligation is incurred. Thereby encumbrance accounting is not used. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

C. Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

D. Basis of Presentation

The School District has adopted the provisions of Statement No. 34 ("Statement 34") of the Government Accounting Standards Board "Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments." Statement 34 established standards for external financial reporting for all state and local government entities, which includes government-wide financial statements, fund financial statements and the classification of net assets into three components – invested in capital assets, net of related debt; restricted; and unrestricted.

Government-wide and fund financial statements – The government-wide financial statements report information on all of the nonfiduciary activities of the primary government. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental receipts, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct disbursements of a given function or segment are offset by program receipts. Direct disbursements are those that are clearly identifiable with a specific function or segment. Program receipts include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program receipts are reported instead as general receipts.

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 1

Significant Accounting Policies (Continued)

Separate financial statements are provided for governmental funds, proprietary funds and fiduciary funds, even though the latter are excluded from the government-wide financial statements. Major individual governmental funds and major individual proprietary funds are reported as separate columns in the fund financial statements.

Proprietary funds are used to account for the School District's business type activities. Proprietary funds distinguish operating receipts and disbursements from nonoperating items. Operating receipts and disbursements generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. All receipts and disbursements not meeting this definition are reported as nonoperating receipts and disbursements. The School District had no proprietary funds.

Fiduciary funds report assets held in a trustee or agency capacity for others and therefore cannot be used to support the School District's own programs. The District has no fiduciary funds.

NOTE 2

Reporting Entity

The Board of Education, a nine-member group constituting an on-going entity, is the level of government which has governance responsibilities over all activities related to public elementary and secondary school education within the jurisdiction of School District No. 11-0020, Lyons, Nebraska. The Board receives funding from local, state, and federal government sources and must comply with the concomitant requirements, of these funding source entities. However, the Board is not included in any other governmental reporting entity. Board members are elected by the public and have decision-making authority, the power to adopt its own budget, to designate management, the responsibility to significantly influence operations and primary accountability for fiscal matters. Based on these criteria, the Board of Education is not considered a component unit of any other governmental reporting entity. All significant activities and organizations in which the District exercises oversight responsibility have been included in the District's financial statement.

NOTE 3

Fund Balance Reporting

The Governmental Accounting Standards Board (GASB) has issued Statement No.54, *Fund Balance Reporting and Governmental Fund Type Definitions* (GASB 54). This Statement (Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 3

Fund Balance Reporting (Continued)

defines the different types of fund balances that a governmental entity must use for financial reporting purposes.

GASB 54 requires the fund balance amounts to be properly reported within one of the fund balance categories list below.

1. *Nonspendable*, such as fund balance associated with inventories, prepaids, long-term loans and notes receivable, and property held for resale (unless the proceeds are restricted, committed, or assigned),
2. *Restricted* fund balance category includes amounts that can be spent only for the specific purposes stipulated by constitution, external resource providers, or through enabling legislation,
3. *Committed* fund balance classification includes amounts that can be used only for the specific purposes determined by a formal action of the School District Board of Education (the district's highest level of decision-making authority),
4. *Assigned* fund balance classification are intended to be used by the government for specific purposes but not meet the criteria to be classified as restricted or committed, and
5. *Unassigned* fund balance is the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications

Committed Fund Balance Policy

The District's Committed Fund Balance is fund balance reporting required by the School Board, either because of a School Board Policy in the School Board Policy Manual, or because of motions that passed at School Board meetings.

Assigned Fund Balance Policy

The District's Assigned Fund Balance is fund balance reporting occurring by School Board Administration authority, under the direction of the Superintendent.

Order of Fund Balance Spending Policy

The District's policy is to apply expenditures against non-spendable fund balance, restricted fund balance, committed fund balance, assigned fund balance, an unassigned fund balance at the end of the fiscal year by adjusting journal entries.

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 3

Fund Balance Reporting (Continued)

First Non-spendable fund balances are determined. Then restricted fund balances for specific purposes are determined (not including non-spendable amounts). Then any remaining fund balance amounts for the non-general funds are classified as restricted fund balance.

It is possible for the non-general funds to have negative unassigned fund balance when non-spendable amounts plus the restricted fund balances for specific purposes amounts exceed the positive fund balance for the non-general fund.

NOTE 4

Cash and Deposits

Cash for the School District at August 31, 2021, consisted of the following:

	<u>Book Amount</u>	<u>Bank Amount</u>
<u>General Fund</u>		
Cash in Bank – Checking	\$ (55,042.88)	\$ 1,744.94
Cash in Bank – Savings – Lyons	792,496.55	792,496.55
Cash in Bank – Savings – Decatur	409,990.75	409,937.05
Cash in Bank – General Reimbursement	6,189.84	6,189.84
Cash in Bank – Payroll Withholding	15,001.58	15,001.58
<u>Depreciation Fund</u>		
Cash in Bank	48,232.97	48,232.97
Certificates of Deposits	64,607.39	64,607.39
<u>Employee Benefit Fund</u>		
Cash in Bank	19,529.50	19,529.50
<u>Activities Fund</u>		
Cash in Bank	83,965.56	90,267.02
<u>School Nutrition Fund</u>		
Cash in Bank	50,864.26	50,814.26
<u>Special Building Fund</u>		
Cash in Bank	1,078,184.24	1,082,044.74
Certificates of Deposit	34,415.27	34,415.27

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 4

Cash and Deposits (Continued)

	Book Amount	Bank Amount
<u>Cooperative Fund</u>		
Cash in Bank	\$ 1,920.93	\$ 3,559.53
<u>Student Fee Fund</u>		
Cash in Bank	0.00	1,757.46
	\$ 2,550,355.96	\$ 2,620,598.10

Nebraska Statute Section 79-1042 provides that except as provided by Section 79-1043, school district treasurers shall not lend or use any part of the school money, which may be in their hands under penalty of fine and imprisonment as provided regarding embezzlement under sections 28-509 to 28-518.

Nebraska Statute Section 79-1043 provides that the District may, by and with the consent of the Board of Education of the District, invest the funds of the District in securities, including repurchase agreements, the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another.

At August 31, 2021, the School District had bank deposits of \$2,620,598.10. All of this balance was covered by federal depository insurance and/ or collateralized by U.S. Government securities subject to joint custody safe keeping receipts issued by the custodial financial institution, which was not the pledging institution. The insured amounts are classified as a Category 1 level of risk while the collateralized and uncollateralized amounts are a Category 3 level of risk as described below.

The District's deposits are categorized to give an indication of the level of risk assumed by the District at year-end. Category 1 includes deposits that are insured or collateralized or for which securities are held by the District or its agent in the District's name. Category 2 includes uninsured and unregistered deposits for which the counter-party's trust department or agent in the District's name holds the securities. Category 3 includes deposits uncollateralized (this includes any bank balance that is collateralized with securities held by the pledging financial institution, its trust department or agent but not in the District's name).

NOTE 5

Funds Held by County Treasurer

The following receipts were held by the County Treasurers' for the District as of the fiscal year end August 31, 2021, and are included in the fund balances.
(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 5

Funds Held by County Treasurer (Continued)

	August 31, 2021	August 31, 2020
<u>General Fund</u>		
Burt County	\$ 789,226.28	\$ 760,986.00
Cuming County	11,639.28	2,431.86
Thurston County	35,402.38	48,446.94
	\$ 836,267.94	\$ 811,864.80
 <u>Special Building Fund</u>		
Burt County	\$ 0.00	\$ 0.00
Cuming County	0.00	0.00
Thurston County	0.00	0.00
	\$ 0.00	\$ 0.00

NOTE 6

Budget Process and Property Taxes

The District follows these procedures in establishing the budgetary data reflected in the accompanying financial statements:

Prior to the annual budget hearing, the Superintendent and Board of Education prepare a proposed operating budget, on the modified cash basis for each of the District's funds for the fiscal year commencing September 1 of that year. The operating budget includes proposed disbursements and the means of financing them.

Public hearings are conducted to obtain taxpayer comments.

Prior to September 20, the budget is legally adopted by the Board of Education through passage of a resolution.

Total disbursements in each budgetary fund may not legally exceed total appropriation, and appropriations lapse at year end. Any revisions to the budget require Board approval. No supplemental appropriations were made during the year.

The property tax requirement resulting from the budget process is utilized by the County Assessor to establish the tax levy, which attaches as an enforceable lien on property within the District as of December 31. Taxes are due as of that date; half of the unpaid tax is delinquent on May 1 and half is delinquent on September 1. The combined tax rate of the District subject to levy limitation for the year ended August 31, 2021, was \$0.829762 per \$100 of assessed valuation.

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 7

Retirement Plan

Plan Description

The School District No. 11-0020 contributes to the Nebraska School Employees Retirement System, a cost-sharing multiple-employer defined benefit pension plan administered by the Nebraska Public Employees Retirement System (NPERS). NPERS provides retirement and disability benefits to plan members and beneficiaries. The School Employees Retirement Act establishes benefit provisions.

In 1945, the Nebraska Legislature enacted the law establishing a retirement plan for school employees of the State. During the NPERS fiscal year ended June 30, 2020, there were 265 participating school districts. These were the districts that had contributions during the fiscal year. All regular public school employees in Nebraska, other than those who have their own retirement plans (Class V school districts, Nebraska State Colleges, University of Nebraska, Nebraska Community Colleges), are members of the plan.

Normal retirement is at age 65. For an employee who became a member before July 1, 2013, the monthly benefit is equal to the greater of the following: 1) the sum of a savings annuity, which is the actuarial equivalent of the member's accumulated contributions and a service annuity equal to \$3.50 per year of service; or 2) the monthly average of the three 12-month periods of service as a school employee in which such compensation was the greatest, multiplied by total years of creditable service, multiplied by a formula factor of two percent, and an actuarial factor based on age.

For an employee who became a member on or after July 1, 2013, the monthly benefit is equal to the greater of the following: 1) the sum of a savings annuity, which is the actuarial equivalent of the member's accumulated contributions and a service annuity equal to \$3.50 per year of service; or 2) the average of the five 12-month periods of service as a school employee in which such compensation was the greatest, multiplied by total years of creditable service, multiplied by a formula factor of two percent, and an actuarial factor based on age.

Benefit calculations vary with early retirement. Employees' benefits are vested after five years of plan participation or when termination occurs at age 65 or later.

For school employees who became members prior to July 1, 2013, the benefit paid to a retired member or beneficiary receives an annual cost of living adjustment, which is increased by the lesser of the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers or two and one-half percent. The current benefit paid to a retired member or beneficiary is adjusted so that the purchasing power of the benefit being paid is not less than 75 percent of the purchasing power of the initial benefit.

For school employees who became members on or after July 1, 2013, the benefit paid to a retired member or beneficiary receives an annual cost-of-living adjustment, which is
(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 7

Retirement Plan (Continued)

increased by the lesser of the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers or one percent. There is no purchasing power floor for employees who fall under this tier.

For the District's year ended August 31, 2021, the District's total payroll for all employees was \$2,842,736.07. Total covered payroll was \$2,730,797.91. Covered payroll refers to all compensation paid by the District to active employees covered by the Plan.

Contributions

The State's contribution is based on an annual actuarial valuation. In addition, the State contributes an amount equal to two percent of the compensation of all members. This contribution is considered a nonemployer contribution since school employees are not employees of the State. The employee contribution was equal to 9.78 percent from July 1, 2019, to June 30, 2020 (and from July 1, 2020 through, August 31, 2021). The school district (employer) contribution is 101 percent of the employee contribution. The District's contribution to the Plan for its year ended August 31, 2021 was \$269,742.80.

Pension Liabilities

At June 30, 2020 the District had a liability of \$1,643,133 for its proportionate share of the net pension liability. (This liability is not recorded in the accompanying modified cash basis financial statements.) The net pension liability was measured as of June 30, 2020, and the total pension liability used to calculate the net pension liability was determined using an actuarial valuation as of that date. The NPERS School Plan was 88.71% funded as of June 30, 2020 based on actuarial calculations comparing total pension liability to the plan fiduciary net position. The District's proportion of the net pension liability was based on a projection of the District's long-term share of contributions to the pension plan relative to the projected contributions of all participating entities, actuarially determined. At June 30, 2020, the District's proportion was 0.105419 percent, which was an increase of 0.002788 percent from its proportion measured as of June 30, 2019.

For the year ended June 30, 2020, the District's allocated pension expense was \$339,580.

Actuarial Assumptions

The total pension liability in the June 30, 2020 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation	2.75 percent
Salary increases, including wage inflation	3.50 – 8.50 percent

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 7

Retirement Plan (Continued)

Cost-Of-Living Adjustment	Members hired before July 1, 2013: 2.25% with a floor benefit equal to 75% purchasing power of original benefit Members hired on/after July 1, 2013: 1.00% with no floor benefit
Investment Rate Return, net of investment expense, including inflation	7.50 percent

The School Plan's pre-retirement mortality rates were based on the RP-2014 White Collar Table for Employees (100% of male rates for males, 55% of female rates for females), projected generationally with MP-2015.

The School Plan's post-retirement mortality rates were based on the RP-2014 White Collar Table for Employees, set back two years, scaled (males: under 80, 1.008; over 80, 1.449; females: under 85, 0.924; over 85, 1.5855; geometrically blended), projected generationally with a Society of Actuaries projection scale tool using 0.5% ultimate rate in 2035.

The School Plan's disability mortality rates were based on the RP-2014 Disabled Lives table (static table).

The actuarial assumptions used in the July 1, 2019, valuations for the School plan are based on the results of the most recent actuarial experience study, which covered the four year period ending June 30, 2015. The experience study report is dated November 17, 2016.

The long-term expected real rate of return on pension plan investments was based upon the expected long-term investment returns provided by a consultant of the Nebraska Investment Council, who is responsible for investing the pension plan assets. The return assumptions were developed using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. Best estimates of arithmetic real rates of return for each major asset class included in the pension plans' target asset allocation as of June 30, 2020, (see the discussion of the pension plan's investment policy) are summarized in the following table:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return*
Large Cap U.S. Equity	26.10%	5.83%
Small Cap U.S. Equity	2.90%	7.56%
Global Equity	15.00%	6.51%
International Developed Equity	10.80%	6.80%
Emerging Markets	2.70%	10.55%

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 7

Retirement Plan (Continued)

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return*
Core Bonds	20.00%	1.63%
High Yield	3.50%	5.22%
Bank Loans	5.00%	2.78%
International Bonds	1.50%	1.41%
Private Equity	5.00%	9.70%
Real Estate	7.50%	5.18%
Total	100.00%	

* Arithmetic mean, net of investment expenses

Discount Rate

The discount rate used to measure the Total Pension Liability at June 30, 2020, was seven and a half percent. The discount rate is reviewed as part of the actuarial experience study, which was last performed for the period July 1, 2011, through June 30, 2015. The actuarial experience study is reviewed by the NPERS Board, which must vote to change the discount rate.

The projection of cash flows used to determine the discount rate assumed that contributions from plan members will be made at the current contribution rate and contributions from employers and nonemployers will be made at the contractually required rates, actuarially determined. Based on those assumptions, the pension plans' fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payment to determine the total pension liability. The projected future benefit payments for all current plan members were projected through 2119.

Sensitivity of the District's Proportionate Share of the Net Pension Liability to Changes in the Discount Rate.

The following presents the District's proportionate share of the net pension liability calculated using the discount rate of 7.5 percent, as well as what the District's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.5 percent) or 1-percentage-point higher (8.5 percent) than the current rate:

	Discount rate	District's proportionate Share of net pension liability
1% decrease	6.5%	\$ 3,648,797

(Continued)

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 7

Retirement Plan (Continued)

	<u>Discount rate</u>	<u>District's proportionate Share of net pension liability</u>
Current discount rate	7.5%	\$ 1,643,133
1% increase	8.5%	\$ (12,545)

Plan Fiduciary Net Position

Detailed information about the Plan's fiduciary net position is available in the separately issued Nebraska Public Employees Retirement Systems Plan financial report. NPERS issues a publicly available financial report that includes financial statements and required supplementary information for NPERS. That report may be obtained via the internet at http://www.auditors.nebraska.gov/APA_Reports.

NOTE 8

Risk Management

The District is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. During the year, the District carried commercial insurance for property, inland marine, umbrella liability, automobiles, linebacker, worker's compensation, general liability, board treasurer's bond, and notary bond. Settled claims resulting from these risks have not exceeded commercial insurance coverage in any of the past three fiscal years.

NOTE 9

Non-Monetary Transactions

The School District receives Federal Food Commodities that are passed through the State Department of Social Services. The Department of Social Services provides the School District with a detailed listing of commodities received by the School District, and its monetary value. For the Department of Social Services fiscal year ended June 30, 2021, the value of commodities received by the School was \$10,823.27.

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
NOTES TO THE FINANCIAL STATEMENTS
AUGUST 31, 2021

NOTE 10

Subsequent Events

Subsequent events have been evaluated through the audit report date, the date the financial statements were available to be issued.

NOTE 11

Transfers

During the year ended August 31, 2021, the District did not make any transfers.

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
Fund Balance, September 1, 2020	\$ 2,248,722.95	\$ 2,047,000.00
Receipts (Schedule A)	5,052,405.20	4,802,000.00
	\$ 7,301,128.15	\$ 6,849,000.00
Disbursements (Schedule B)	5,296,224.37	5,849,000.00
Fund Balance, August 31, 2021	<u>\$ 2,004,903.78</u>	<u>\$ 1,000,000.00</u>
Represented by:		
Cash in Bank	\$ 1,168,635.84	
County Treasurers' Balance, August 31, 2021	836,267.94	
	<u>\$ 2,004,903.78</u>	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS COMPARED TO BUDGET
GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
<u>1000 Local Receipts</u>		
1100 Local Property Taxes	\$ 3,559,587.19	\$ 3,968,000.00
1115 Carline Tax	2,278.59	1,600.00
1125 Motor Vehicle Taxes	194,837.24	163,000.00
1140 Penalties and Interest on Taxes	7,959.64	7,000.00
1510 Interest	4,294.54	5,000.00
1520 Dividends	243.19	5,000.00
1740 Student Fees	4,364.00	
1910 Rental of School Facilities		3,000.00
1911 Local License Fees	2,270.00	
1920 Contributions and Donations from Private Souces	10,301.60	
1955 Postsecondary Receipts	1,256.25	
1990 Other Local Receipts	2,885.56	7,000.00
	<u>\$ 3,790,277.80</u>	<u>\$ 4,159,600.00</u>
<u>2000 County Receipts</u>		
2110 County Fines and Licenses	\$ 13,345.26	\$ 8,500.00
2210 Educational Service Unit	625.00	
	<u>\$ 13,970.26</u>	<u>\$ 8,500.00</u>
<u>3000 State Receipts</u>		
3110 State Aid	\$ 31,644.00	\$ 31,644.00
3120 Special Education Programs	296,557.00	294,000.00
3125 Special Education Transportation	28,833.00	44,000.00
3130 Homestead Exemption	52,757.08	
3131 Property Tax Credit	319,942.64	
3132 Personal Property Tax Credit	1.78	
3180 Pro-Rate Motor Vehicle	5,235.58	4,500.00
3400 State Apportionment	37,653.47	43,000.00
3535 High Ability Learners	3,744.00	3,500.00
3540 State Early Education	29,945.00	38,000.00
3570 Teacher Evaluation Development Grant	10,464.63	
3990 Other State Receipts	42,000.00	
	<u>\$ 858,778.18</u>	<u>\$ 458,644.00</u>

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS COMPARED TO BUDGET
GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
<u>4000 Federal Receipts</u>		
4212 Title I	\$ 23,539.00	
4310 REAP Grant	24,926.00	
4505 Title I, Part A: ESSA Improving Basic Programs		\$ 35,000.00
4508 Title I, Part D Subpart 2	30,283.00	
4509 Title II Part A	19,479.00	20,000.00
4511 Title V, Part B Subpart 2 ESSA	4,845.00	
4512 IDEA Part B (611) Base Allocation		73,000.00
4516 IDEA Preschool (619) Base	1,513.00	
4518 IDEA Part B (611) Base & Enrollment Poverty Allocation	71,455.00	
4521 IDEA Part B Proportionate Share	2,584.00	
4525 Federal Vocational & Applied Technology Education	2,340.59	4,000.00
4530 Other Federal Categorical Receipts	11,100.00	
4531 Title IV, Part B ESSA 21st Century Community Learning Centers	35,060.00	25,000.00
4708 Medicaid in Public Schools	116.28	3,000.00
4709 Medicaid Administrative Activities	4,528.67	
4710 Categorical Grants from Corporations		15,256.00
4996 Elementary & Secondary School Emergency Relief (ESSER)	49,098.00	
4997 Elementary & Secondary School Emergency Relief (ESSER II)	100,273.00	
	<u>\$ 381,140.54</u>	<u>\$ 175,256.00</u>
<u>5000 Non-Revenue Receipts</u>		
5690 Other Non-Revenue Receipts	\$ 8,238.42	\$ 0.00
Total Receipts	<u>\$ 5,052,405.20</u>	<u>\$ 4,802,000.00</u>

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS COMPARED TO BUDGET -
GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	Total	Budget Original & Final
PROGRAMS:		
1100 Regular Instruction Programs	\$ 1,997,406.55	\$ 2,309,410.00
1190 Early Childhood Educational Programs	90,330.21	69,090.00
1200 Special Education Instruction	648,909.00	930,700.00
1291 Special Education Instructional Programs - Ages 3-5	21.98	14,300.00
1292 Special Education Instructional Programs - Ages 0-2		5,000.00
2120 Guidance Services	100,919.21	100,535.00
2130 Health Services	10,628.21	7,700.00
2141 Psychological Services: SPED School Age	9,726.38	31,000.00
2151 Speech Pathology & Audiology Services: SPED School Age	64,719.35	61,000.00
2152 Speech Pathology & Audiology Services: SPED Ages 3-5	557.91	5,000.00
2153 Speech Pathology & Audiology Services: SPED Ages 0-2	131.55	5,000.00
2161 Occupational Therapy - Related Services: SPED School Age	6,205.42	31,800.00
2162 Occupational Therapy - Related Services: SPED Ages 3-5	255.91	10,000.00
2171 Physical Therapy - Related Services: SPED School Age	6,244.48	8,000.00
2172 Physical Therapy - Related Services: SPED Ages 3-5		4,000.00
2173 Physical Therapy - Related Services: SPED Ages 0-2		3,000.00
2181 Visually Impaired - Related Services: SPED School Age	4,743.63	1,200.00
2190 Support Services - Other	212,532.33	187,265.00
2210 Improvement of Instruction	660.79	11,570.00
2211 School Improvement		900.00
2212 Instruction and Curriculum Development	996.33	1,200.00
2213 Instructional Staff Training	1,950.05	2,524.00
2214 Implementation of Standards		60.00
2220 Library/Media Services	133,355.67	130,746.00
2223 Audio-Visual Services	357.87	250.00
2230 Instruction-Related Technology	119,616.65	102,750.00
2310 Board of Education	26,866.08	20,000.00
2320 Executive Administration Services	207,283.63	295,000.00
2330 District Legal Services	8,580.64	18,000.00
2410 Office of Principal	292,882.62	350,000.00
2510 Fiscal Services	94,438.83	800.00
2520 Purchasing Services	74,314.74	67,350.00
2530 Printing, Publishing & Duplicating Services	4,192.74	420.00
2560 Public Information Services	450.00	4,080.00
2570 Personnel Services	44,499.56	2,400.00
2580 Administrative Technology Services	252.91	950.00
2590 Central Services	2,611.56	2,000.00
2610 Operation of Buildings	364,296.09	230,665.00
2620 Maintenance of Buildings	132,254.31	160,360.00
2630 Care & Upkeep of Grounds	30,136.97	73,400.00
(Continued)		

See Independent Auditor's Report

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS COMPARED TO BUDGET -
GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Total</u>	<u>Budget Original & Final</u>
PROGRAMS: (Continued)		
2640 Care & Upkeep of Equipment	\$ 2,912.00	\$ 1,000.00
2650 Vehicle Operation, Maintenance & Purchasing	2,601.18	12,000.00
2660 Security	3,625.63	18,075.00
2670 Safety	4,255.65	6,500.00
2710 Vehicle Operation & Purchasing - Regular Education	101,208.22	142,550.00
2712 Vehicle Operation & Purchasing - School Age SPED	63,665.67	79,000.00
2730 Vehicle Servicing & Maintenance - Regular Education	14,898.32	31,450.00
2732 Vehicle Servicing & Maintenance - School Age SPED	5,385.54	6,000.00
3535 High Ability Learners	3,844.91	3,300.00
3540 State Early Childhood	39,651.43	46,700.00
6200 Title I	53,708.29	54,767.00
6310 Title II Part A	17,256.95	18,820.00
6406 IDEA Preschool (619) Base Allocation	1,524.00	3,000.00
6408 IDEA Part B (611) Base & Enrollment Poverty Allocation Birth Through Age Twenty-One	72,472.00	79,000.00
6412 IDEA Part B Proportionate Share	2,245.00	200.00
6700 Federal Vocational & Applied Technology Education	2,490.54	3,237.00
6968 21st Century Grant	56,562.28	54,976.00
6969 Title IV, Part A	545.12	1,000.00
6990 Other Federal Categorical Programs	5,597.17	
6992 REAP		17,000.00
6996 Elementary & Secondary School Emergency Relief (ESSER)	5,315.39	5,000.00
6997 Elementary & Secondary School Emergency Relief (ESSER II)	143,128.92	6,000.00
Total Disbursements	<u>\$ 5,296,224.37</u>	<u>\$ 5,849,000.00</u>

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - DEPRECIATION FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
Fund Balance, September 1, 2020	\$ 197,292.54	\$ 197,000.00
Receipts:		
1510 Interest	\$ 318.82	\$ 0.00
Total Funds Available	<u>\$ 197,611.36</u>	<u>\$ 197,000.00</u>
Disbursements:		
2900-700 Property	<u>\$ 84,771.00</u>	<u>\$ 197,000.00</u>
Fund Balance, August 31, 2021	<u>\$ 112,840.36</u>	<u>\$ 0.00</u>
Represented by:		
Cash in Bank	<u>\$ 112,840.36</u>	

**SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA**

**SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES IN FUND BALANCE
COMPARED TO BUDGET - EMPLOYEE BENEFIT FUND
FOR THE YEAR ENDED AUGUST 31, 2021**

	<u>Actual</u>	<u>Budget Original & Final</u>
Fund Balance, September 1, 2020	\$ 21,488.00	\$ 21,488.00
Receipts:		
5200 Allocation from General Fund	\$ 0.00	\$ 0.00
Total Funds Available	<u>\$ 21,488.00</u>	<u>\$ 21,488.00</u>
Disbursements:		
2900-200 Employee Benefits	<u>\$ 1,958.50</u>	<u>\$ 21,488.00</u>
Fund Balance, August 31, 2021	<u>\$ 19,529.50</u>	<u>\$ 0.00</u>
Represented by:		
Cash in Bank	<u>\$ 19,529.50</u>	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - ACTIVITIES FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
Fund Balance, September 1, 2020	\$ 69,280.13	\$ 55,000.00
Receipts:		
1510 Interest	\$ 83.60	
1790 Other Activity Income	77,974.37	\$ 70,000.00
Total Receipts	\$ 78,057.97	\$ 70,000.00
Total Funds Available	\$ 147,338.10	\$ 125,000.00
Disbursements:		
2900-610 Supplies	\$ 63,372.54	\$ 125,000.00
Fund Balance, August 31, 2021	<u>\$ 83,965.56</u>	<u>\$ 0.00</u>
Represented by:		
Cash in Bank	<u>\$ 83,965.56</u>	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - SCHOOL NUTRITION FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	Actual	Budget Original & Final
Fund Balance, September 1, 2020	\$ 53,225.40	\$ 39,000.00
Receipts:		
1611 Student Lunches		\$ 72,000.00
1620 Non Reimbursable	\$ 25,600.88	
3150 State Reimbursement	1,591.77	1,000.00
4210 Federal Reimbursement	182,483.02	125,000.00
Total Receipts	\$ 209,675.67	\$ 198,000.00
Total Funds Available	\$ 262,901.07	\$ 237,000.00
Disbursements:		
3100-100 Salaries	\$ 64,638.51	\$ 68,000.00
3100-200 Employee Benefits	38,356.95	20,000.00
3100-400 Purchased Property Services	90.00	8,000.00
3100-610 Supplies	5,353.64	12,000.00
3100-630 Food	102,186.33	122,000.00
3100-643 Web Based Software	1,277.09	
3100-700 Equipment	134.29	5,000.00
3100-800 Other		2,000.00
Total Disbursements	\$ 212,036.81	\$ 237,000.00
Fund Balance, August 31, 2021	\$ 50,864.26	\$ 0.00
Represented by:		
Cash in Bank	\$ 50,864.26	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - SPECIAL BUILDING FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
Fund Balance, September 1, 2020	\$ 1,230,140.39	\$ 1,251,000.00
Receipts:		
1100 Local Property Taxes	\$ 109.67	
1140 Penalties & Interest on Taxes	55.47	
1510 Interest	1,102.81	\$ 3,000.00
Total Receipts	<u>\$ 1,267.95</u>	<u>\$ 3,000.00</u>
Total Funds Available	<u>\$ 1,231,408.34</u>	<u>\$ 1,254,000.00</u>
Disbursements:		
4200-450 Construction Services	\$ 3,860.50	
4200-710 Site Acquisition and Improvements	74,498.09	
4500-720 Buildings	40,450.24	\$ 1,254,000.00
Total Disbursements	<u>\$ 118,808.83</u>	<u>\$ 1,254,000.00</u>
Fund Balance, August 31, 2021	<u>\$ 1,112,599.51</u>	<u>\$ 0.00</u>
Represented by:		
Cash in Bank	<u>\$ 1,112,599.51</u>	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - COOPERATIVE FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	<u>Actual</u>	<u>Budget Original & Final</u>
Fund Balance, September 1, 2020	\$ 180.37	\$ 5,500.00
Receipts:		
1990 Other Local Receipts	\$ 59,697.11	\$ 122,500.00
Total Funds Available	\$ 59,877.48	\$ 128,000.00
Disbursements:		
2190-610 Supplies	\$ 57,956.55	\$ 128,000.00
Fund Balance, August 31, 2021	<u>\$ 1,920.93</u>	<u>\$ 0.00</u>
Represented by:		
Cash in Bank	<u>\$ 1,920.93</u>	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH RECEIPTS, DISBURSEMENTS, AND CHANGES
IN FUND BALANCE COMPARED TO BUDGET - STUDENT FEE FUND
FOR THE YEAR ENDED AUGUST 31, 2021

	Actual	Budget Original & Final
Fund Balance, September 1, 2020	\$ (59.87)	\$ 0.00
Receipts:		
1743 Summer School/Night School Fees	\$ 3,264.87	\$ 5,000.00
Total Funds Available	\$ 3,205.00	\$ 5,000.00
Disbursements:		
1300-100 Salaries	\$ 2,215.50	\$ 4,000.00
1300-200 Employee Benefits	388.32	400.00
2190-400 Purchased Property Services	284.20	300.00
2190-600 Supplies	316.98	300.00
Total Disbursements	\$ 3,205.00	\$ 5,000.00
Fund Balance, August 31, 2021	\$ 0.00	\$ 0.00
Represented by:		
Cash in Bank	\$ 0.00	

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	Total	Budget Original & Final
<u>1100 Regular Instruction Programs</u>		
Salaries	\$ 1,302,106.71	\$ 1,471,400.27
Employee Benefits	484,287.10	458,300.00
Retirement	91,754.89	108,600.00
Increased Retirement	31,509.21	36,000.00
Purchased Professional/Technical Services	1,232.02	16,600.00
Purchased Property Services	(10.00)	4,500.00
Other Property Services	1,540.00	1,600.00
Supplies	82,260.02	207,609.73
Property		500.00
Other Items	2,726.60	4,300.00
	<u>\$ 1,997,406.55</u>	<u>\$ 2,309,410.00</u>
<u>1190 Early Childhood Educational Programs</u>		
Salaries	\$ 60,750.25	\$ 32,500.00
Employee Benefits	17,885.19	24,590.00
Retirement	4,456.11	5,200.00
Increased Retirement	1,530.26	1,600.00
Supplies	5,698.40	5,100.00
Other Items	10.00	100.00
	<u>\$ 90,330.21</u>	<u>\$ 69,090.00</u>
<u>1200 Special Education Instruction</u>		
Salaries	\$ 347,960.40	\$ 334,500.00
Employee Benefits	97,677.93	102,650.00
Retirement	25,058.93	26,800.00
Increased Retirement	8,605.41	8,400.00
Purchased Professional/Technical Services		700.00
Other Property Services	159,746.83	448,450.00
Supplies	4,025.30	9,000.00
Other Items	5,834.20	200.00
	<u>\$ 648,909.00</u>	<u>\$ 930,700.00</u>
<u>1291 Special Education Instructional Programs - Ages 3-5</u>		
Salaries		\$ 5,500.00
Employee Benefits		1,500.00
Retirement		1,000.00
Increased Retirement		300.00
(Continued)		

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	<u>Total</u>	<u>Budget Original & Final</u>
<u>1291 Special Education Instructional Programs - Ages 3-5 (Continued)</u>		
Other Property Services		\$ 5,000.00
Supplies	\$ 21.98	1,000.00
	<u>\$ 21.98</u>	<u>\$ 14,300.00</u>
<u>1292 Special Education Instructional Programs - Ages 0-2</u>		
Other Property Services	\$ 0.00	\$ 5,000.00
<u>2120 Guidance Services</u>		
Salaries	\$ 71,469.00	\$ 72,000.00
Employee Benefits	21,228.23	20,690.00
Retirement	5,251.26	5,600.00
Increased Retirement	1,803.22	1,800.00
Purchased Professional/Technical Services		45.00
Supplies	1,167.50	400.00
	<u>\$ 100,919.21</u>	<u>\$ 100,535.00</u>
<u>2130 Health Services</u>		
Purchased Professional/Technical Services	\$ 4,600.00	\$ 4,700.00
Supplies	6,028.21	3,000.00
	<u>\$ 10,628.21</u>	<u>\$ 7,700.00</u>
<u>2141 Psychological Services: SPED School Age</u>		
Other Property Services	\$ 9,726.38	\$ 31,000.00
<u>2151 Speech Pathology & Audiology Services: SPED School Age</u>		
Other Property Services	\$ 64,719.35	\$ 61,000.00
<u>2152 Speech Pathology & Audiology Services: SPED Ages 3-5</u>		
Other Property Services	\$ 557.91	\$ 5,000.00
<u>2153 Speech Pathology & Audiology Services: SPED Ages 0-2</u>		
Other Property Services	\$ 131.55	\$ 5,000.00
<u>2161 Occupational Therapy - Related Services: SPED School Age</u>		
Other Property Services	\$ 6,205.42	\$ 31,800.00
<u>2162 Occupational Therapy - Related Services: SPED Ages 3-5</u>		
Other Property Services	\$ 255.91	\$ 10,000.00

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	<u>Total</u>	<u>Budget Original & Final</u>
<u>2171 Physical Therapy - Related Services: SPED School Age</u> Purchased Professional/Technical Services	\$ 6,244.48	\$ 8,000.00
<u>2172 Physical Therapy - Related Services: SPED Ages 3-5</u> Purchased Professional/Technical Services	\$ 0.00	\$ 4,000.00
<u>2173 Physical Therapy - Related Services: SPED Ages 0-2</u> Purchased Professional/Technical Services	\$ 0.00	\$ 3,000.00
<u>2181 Visually Impaired - Related Services: SPED School Age</u> Other Property Services	\$ 4,743.63	\$ 1,200.00
<u>2190 Support Services - Other</u>		
Salaries	\$ 133,174.14	\$ 119,750.00
Employee Benefits	25,297.78	21,285.00
Retirement	982.49	760.00
Increased Retirement	11,987.20	11,525.00
Purchased Professional/Technical Services	2,101.30	2,700.00
Purchased Property Services		500.00
Other Property Services	4,163.22	1,000.00
Supplies	16,753.35	20,545.00
Other Items	18,072.85	9,200.00
	<u>\$ 212,532.33</u>	<u>\$ 187,265.00</u>
<u>2210 Improvement of Instruction</u>		
Purchased Professional/Technical Services		\$ 6,570.00
Other Property Services		5,000.00
Supplies	\$ 660.79	
	<u>\$ 660.79</u>	<u>\$ 11,570.00</u>
<u>2211 School Improvement</u>		
Other Items	\$ 0.00	\$ 900.00
<u>2212 Instruction and Curriculum Development</u>		
Employee Benefits	\$ 64.84	
Retirement	62.32	
Increased Retirement	21.40	
Purchased Professional/Technical Services	847.77	\$ 1,200.00
	<u>\$ 996.33</u>	<u>\$ 1,200.00</u>

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	Total	Budget Original & Final
<u>2213 Instructional Staff Training</u>		
Purchased Professional/Technical Services	\$ 1,950.05	\$ 1,520.00
Other Property Services		904.00
Other Items		100.00
	\$ 1,950.05	\$ 2,524.00
<u>2214 Implementation of Standards</u>		
Purchased Professional/Technical Services	\$ 0.00	\$ 60.00
<u>2220 Library/Media Services</u>		
Salaries	\$ 79,833.87	\$ 78,400.00
Employee Benefits	26,896.45	27,900.00
Retirement	5,645.91	6,400.00
Increased Retirement	2,225.25	2,000.00
Other Property Services		700.00
Supplies	18,424.19	15,060.00
Other Items	330.00	286.00
	\$ 133,355.67	\$ 130,746.00
<u>2223 Audio-Visual Services</u>		
Supplies	\$ 357.87	\$ 250.00
<u>2230 Instruction-Related Technology</u>		
Salaries	\$ 65,952.75	\$ 63,370.00
Employee Benefits	14,035.47	14,550.00
Retirement	4,849.36	4,700.00
Increased Retirement	1,665.31	1,600.00
Purchased Professional/Technical Services	10,653.74	3,400.00
Purchased Property Services		100.00
Other Property Services		270.00
Supplies	22,360.02	14,200.00
Other Items	100.00	560.00
	\$ 119,616.65	\$ 102,750.00
<u>2310 Board of Education</u>		
Salaries	\$ 1,000.00	\$ 1,000.00
Employee Benefits	76.47	100.00
Retirement	73.56	100.00
Increased Retirement	25.21	50.00

(Continued)

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	Total	Budget Original & Final
<u>2310 Board of Education (Continued)</u>		
Purchased Professional/Technical Services	\$ 8,895.33	\$ 7,055.00
Other Property Services	1,736.99	2,000.00
Supplies	3,859.58	4,160.00
Other Items	11,198.94	5,535.00
	<u>\$ 26,866.08</u>	<u>\$ 20,000.00</u>
 <u>2320 Executive Administration Services</u>		
Salaries	\$ 152,021.63	\$ 210,620.00
Employee Benefits	29,847.83	48,770.00
Retirement	11,047.62	13,300.00
Increased Retirement	3,793.80	4,600.00
Purchased Professional/Technical Services	1,806.83	2,410.00
Purchased Property Services		1,000.00
Other Property Services	1,051.92	910.00
Supplies	6,149.00	12,290.00
Other Items	1,565.00	1,100.00
	<u>\$ 207,283.63</u>	<u>\$ 295,000.00</u>
 <u>2330 District Legal Services</u>		
Legal Services	\$ 8,580.64	\$ 18,000.00
 <u>2410 Office of Principal</u>		
Salaries	\$ 195,205.85	\$ 206,200.00
Employee Benefits	68,319.58	59,300.00
Retirement	14,351.31	40,000.00
Increased Retirement	4,928.34	8,000.00
Purchased Professional/Technical Services	945.31	1,900.00
Other Property Services	979.80	9,200.00
Supplies	4,897.43	23,000.00
Other Items	3,255.00	2,400.00
	<u>\$ 292,882.62</u>	<u>\$ 350,000.00</u>
 <u>2510 Fiscal Services</u>		
Salaries	\$ 57,401.23	
Employee Benefits	21,113.94	
Retirement	4,220.56	
Increased Retirement	1,449.38	
(Continued)		

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	Total	Budget Original & Final
<u>2510 Fiscal Services (Continued)</u>		
Purchased Professional/Technical Services	\$ 453.27	\$ 800.00
Other Property Services	512.37	
Supplies	8,723.00	
Other Items	565.08	
	<u>\$ 94,438.83</u>	<u>\$ 800.00</u>
 <u>2520 Purchasing Services</u>		
Salaries	\$ 38,830.96	\$ 32,500.00
Employee Benefits	10,510.08	9,300.00
Retirement	2,855.18	2,700.00
Increased Retirement	980.50	850.00
Purchased Professional/Technical Services	18.40	
Purchased Property Services	1,269.73	4,700.00
Other Property Services	3,476.71	3,300.00
Supplies	16,373.18	14,000.00
	<u>\$ 74,314.74</u>	<u>\$ 67,350.00</u>
 <u>2530 Printing, Publishing & Duplicating Services</u>		
Other Property Services	\$ 4,192.74	\$ 420.00
 <u>2560 Public Information Services</u>		
Purchased Professional/Technical Services		\$ 3,000.00
Supplies	\$ 450.00	1,080.00
	<u>\$ 450.00</u>	<u>\$ 4,080.00</u>
 <u>2570 Personnel Services</u>		
Purchased Professional/Technical Services	\$ 44,318.56	\$ 900.00
Other Property Services	181.00	1,500.00
	<u>\$ 44,499.56</u>	<u>\$ 2,400.00</u>
 <u>2580 Administrative Technology Services</u>		
Other Property Services	\$ 252.91	
Supplies		\$ 950.00
	<u>\$ 252.91</u>	<u>\$ 950.00</u>
 <u>2590 Central Services</u>		
Purchased Professional/Technical Services	\$ 2,611.56	\$ 2,000.00
See Independent Auditor's Report		

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	<u>Total</u>	<u>Budget Original & Final</u>
<u>2610 Operation of Buildings</u>		
Salaries	\$ 1,658.35	
Employee Benefits	1,995.79	
Retirement	121.93	
Increased Retirement	41.88	
Purchased Property Services	95,937.36	\$ 112,000.00
Other Property Services	110,914.00	
Supplies	153,378.78	108,000.00
Property		10,500.00
Other Items	248.00	165.00
	<u>\$ 364,296.09</u>	<u>\$ 230,665.00</u>
<u>2620 Maintenance of Buildings</u>		
Salaries	\$ 48,343.87	\$ 65,200.00
Employee Benefits	34,647.41	26,600.00
Retirement	3,533.69	6,000.00
Increased Retirement	1,213.51	1,800.00
Purchased Professional/Technical Services	52.08	100.00
Purchased Property Services	23,803.91	54,660.00
Supplies	14,307.17	1,000.00
Property	6,352.67	5,000.00
	<u>\$ 132,254.31</u>	<u>\$ 160,360.00</u>
<u>2630 Care & Upkeep of Grounds</u>		
Purchased Professional/Technical Services	\$ 2,429.76	\$ 400.00
Purchased Property Services	24,313.02	70,000.00
Supplies	3,394.19	3,000.00
	<u>\$ 30,136.97</u>	<u>\$ 73,400.00</u>
<u>2640 Care & Upkeep of Equipment</u>		
Purchased Property Services	\$ 2,912.00	\$ 1,000.00
<u>2650 Vehicle Operation, Maintenance & Purchasing</u>		
Purchased Property Services	\$ 945.26	\$ 3,800.00
Supplies	1,655.92	2,000.00
Property		6,200.00
	<u>\$ 2,601.18</u>	<u>\$ 12,000.00</u>

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	Total	Budget Original & Final
<u>2660 Security</u>		
Purchased Professional/Technical Services	\$ 1,685.20	\$ 15,975.00
Purchased Property Services	1,815.81	2,000.00
Supplies	124.62	100.00
	<u>\$ 3,625.63</u>	<u>\$ 18,075.00</u>
<u>2670 Safety</u>		
Purchased Professional/Technical Services	\$ 2,071.30	\$ 3,000.00
Purchased Property Services	1,572.95	3,000.00
Supplies	611.40	500.00
	<u>\$ 4,255.65</u>	<u>\$ 6,500.00</u>
<u>2710 Vehicle Operation & Purchasing - Regular Education</u>		
Salaries	\$ 58,554.30	\$ 78,000.00
Employee Benefits	4,479.64	10,000.00
Retirement	3,146.50	5,000.00
Increased Retirement	1,080.72	1,600.00
Purchased Professional/Technical Services	13,450.67	22,750.00
Supplies	19,749.89	24,500.00
Other Items	746.50	700.00
	<u>\$ 101,208.22</u>	<u>\$ 142,550.00</u>
<u>2712 Vehicle Operation & Purchasing - School Age SPED</u>		
Salaries	\$ 41,863.90	\$ 48,900.00
Employee Benefits	3,202.61	5,000.00
Retirement	2,768.96	5,000.00
Increased Retirement	950.86	1,000.00
Purchased Professional/Technical Services	7,396.78	7,000.00
Other Property Services	2,035.00	5,000.00
Supplies	5,447.56	7,100.00
	<u>\$ 63,665.67</u>	<u>\$ 79,000.00</u>
<u>2730 Vehicle Servicing & Maintenance - Regular Education</u>		
Purchased Property Services	\$ 14,898.32	\$ 31,450.00
<u>2732 Vehicle Servicing & Maintenance - School Age SPED</u>		
Purchased Property Services	\$ 5,385.54	\$ 6,000.00

See Independent Auditor's Report

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	Total	Budget Original & Final
<u>3535 High Ability Learners</u>		
Supplies	\$ 3,148.41	\$ 2,000.00
Other Items	696.50	1,300.00
	<u>\$ 3,844.91</u>	<u>\$ 3,300.00</u>
<u>3540 State Early Childhood</u>		
Salaries	\$ 25,692.50	\$ 40,000.00
Employee Benefits	11,421.09	5,570.00
Retirement	1,889.10	800.00
Increased Retirement	648.74	330.00
	<u>\$ 39,651.43</u>	<u>\$ 46,700.00</u>
<u>6200 Title I</u>		
Salaries	\$ 36,257.16	\$ 36,267.00
Employee Benefits	13,869.73	13,000.00
Retirement	2,665.90	4,000.00
Increased Retirement	915.50	1,500.00
	<u>\$ 53,708.29</u>	<u>\$ 54,767.00</u>
<u>6310 Title II Part A</u>		
Salaries	\$ 13,014.08	\$ 11,000.00
Employee Benefits	2,943.31	6,020.00
Retirement	1,180.56	1,300.00
Increased Retirement	119.00	500.00
	<u>\$ 17,256.95</u>	<u>\$ 18,820.00</u>
<u>6406 IDEA Preschool (619) Base Allocation</u>		
Other Property Services	\$ 1,524.00	\$ 3,000.00
<u>6408 IDEA Part B (611) Base & Enrollment Poverty Allocation</u>		
<u>Birth Through Age Twenty-One</u>		
Purchased Professional/Technical Services	\$ 4,581.77	\$ 3,000.00
Other Property Services	67,890.23	76,000.00
	<u>\$ 72,472.00</u>	<u>\$ 79,000.00</u>
<u>6412 IDEA Part B Proportionate Share</u>		
Other Property Services	\$ 2,245.00	\$ 200.00

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF MODIFIED CASH DISBURSEMENTS FOR OPERATIONAL EXPENSES
COMPARED TO BUDGET-GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	<u>Total</u>	<u>Budget Original & Final</u>
<u>6700 Federal Vocational & Applied Technology Education</u>		
Supplies	\$ 2,490.54	\$ 3,237.00
<u>6968 21st Century Grant</u>		
Salaries	\$ 30,154.56	\$ 34,300.00
Employee Benefits	2,348.89	6,700.00
Retirement	1,449.77	6,500.00
Increased Retirement	497.79	600.00
Purchased Professional/Technical Services	2,150.00	1,500.00
Other Property Services	14.24	376.00
Supplies	18,947.03	5,000.00
Other Items	1,000.00	
	\$ 56,562.28	\$ 54,976.00
<u>6969 Title IV, Part A</u>		
Supplies	\$ 545.12	\$ 1,000.00
<u>6990 Other Federal Categorical Programs</u>		
Salaries	\$ 4,972.75	
Employee Benefits	338.33	
Retirement	212.96	
Increased Retirement	73.13	
	\$ 5,597.17	\$ 0.00
<u>6992 REAP</u>		
Supplies	\$ 0.00	\$ 17,000.00
<u>6996 Elementary & Secondary School Emergency Relief (ESSER)</u>		
Supplies	\$ 5,315.39	\$ 5,000.00
<u>6997 Elementary & Secondary School Emergency Relief (ESSER II)</u>		
Salaries		\$ 4,000.00
Employee Benefits		1,000.00
Retirement		1,000.00
Supplies	\$ 143,128.92	
	\$ 143,128.92	\$ 6,000.00
Total Disbursements	\$ 5,296,224.37	\$ 5,849,000.00

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SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF COUNTY TREASURERS' GENERAL FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	<u>Burt County</u>	<u>Cuming County</u>	<u>Thurston County</u>	<u>Total</u>
Fund Balance, September 1, 2020	\$ 760,986.00	\$ 2,431.86	\$ 48,446.94	\$ 811,864.80
Receipts:				
Local Property Taxes	\$ 3,209,774.40	\$ 92,959.29	\$ 256,853.50	\$ 3,559,587.19
Carline Tax	2,278.59			2,278.59
Motor Vehicle Taxes	187,613.30	1,906.59	5,317.35	194,837.24
Penalties & Interest on Taxes	6,071.15	1,056.80	831.69	7,959.64
County Fines and License Fees	13,345.26			13,345.26
Homestead Exemption	50,985.71	218.07	1,553.30	52,757.08
Property Tax Credit	287,209.24	10,046.44	22,686.96	319,942.64
Personal Property Tax Credit		1.78		1.78
Pro-rate Motor Vehicle	4,253.99	212.44	769.15	5,235.58
Total Receipts	<u>\$ 3,761,531.64</u>	<u>\$ 106,401.41</u>	<u>\$ 288,011.95</u>	<u>\$ 4,155,945.00</u>
Total Funds Available	<u>\$ 4,522,517.64</u>	<u>\$ 108,833.27</u>	<u>\$ 336,458.89</u>	<u>\$ 4,967,809.80</u>
Disbursements:				
School Treasurer	<u>\$ 3,733,291.36</u>	<u>\$ 97,193.99</u>	<u>\$ 301,056.51</u>	<u>\$ 4,131,541.86</u>
Fund Balance, August 31, 2021	<u>\$ 789,226.28</u>	<u>\$ 11,639.28</u>	<u>\$ 35,402.38</u>	<u>\$ 836,267.94</u>

SCHOOL DISTRICT NO. 11-0020
LYONS, NEBRASKA
SCHEDULE OF COUNTY TREASURERS' SPECIAL BUILDING FUND
FOR THE YEAR ENDED AUGUST 31, 2021
(Unaudited)

	<u>Burt County</u>	<u>Cuming County</u>	<u>Thurston County</u>	<u>Total</u>
Fund Balance, September 1, 2020	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Receipts:				
Local Property Taxes	\$ 105.25		\$ 4.42	\$ 109.67
Penalties & Interest on Taxes	54.46		1.01	55.47
Total Receipts	\$ 159.71	\$ 0.00	\$ 5.43	\$ 165.14
Total Funds Available	\$ 159.71	\$ 0.00	\$ 5.43	\$ 165.14
Disbursements:				
School Treasurer	\$ 159.71	\$ 0.00	\$ 5.43	\$ 165.14
Fund Balance, August 31, 2021	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>

ROMANS, WIEMER & ASSOCIATES

Certified Public Accountants, P.C.

Steven D. Wiemer, CPA

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rwacpas@windstream.net

October 21, 2021

Independent Auditor's Report On Internal Control Over Financial Reporting And On Compliance And Other Matters Based On An Audit Of Financial Statements Performed In Accordance With Government Auditing Standards

Board of Education
School District No. 11-0020
Lyons, Nebraska 68038

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of School District No. 11-0020 of Lyons, Nebraska, as of and for the year ended August 31, 2021, and the related notes to the financial statements, which collectively comprise School District No. 11-0020 of Lyons, Nebraska's basic financial statements and have issued our report thereon dated October 21, 2021. Our report disclosed that as described in Note 1 to the financial statements, the School District prepares its financial statements on the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered School District No. 11-0020 of Lyons, Nebraska's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of School District No. 11-0020 of Lyons, Nebraska's internal control. Accordingly, we do not express an opinion on the effectiveness of School District No. 11-0020 of Lyons, Nebraska's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or combination of deficiencies, in internal control, that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Independent Auditor's Report On Internal Control Over Financial Reporting And On Compliance And Other Matters Based On An Audit Of Financial Statements Performed In Accordance With Government Auditing Standards

School District No. 11-0020, Lyons, Nebraska

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses.

Due to the size of School District No. 11-0020 of Lyons, Nebraska, there is virtually no internal control structure design. While all the general transactions are approved by the Board of Education, adequate personnel are not available to assign responsibilities in such a way that different employees handle different parts of the same transaction. Authorization or approval of transactions, recording of transactions, and custody of assets should normally be segregated activities.

Compliance And Other Matters

As part of obtaining reasonable assurance about whether School District No. 11-0020 of Lyons, Nebraska's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

School District No. 11-0020 of Lyons, Nebraska's Response to Findings

School District No. 11-0020's response to the finding identified in our audit is described below.

The District recognizes that it does not have adequate in-house personnel to assign financial transactions to multiple employees because of the cost effectiveness of such actions. The Board of Education is aware of this deficiency, and will continue to monitor the situation. The elected board and staff have implemented some oversight measures to limit exposure where possible.

School District No. 11-0020's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

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Independent Auditor's Report On Internal Control Over Financial Reporting And On Compliance
And Other Matters Based On An Audit Of Financial Statements Performed In Accordance With
Government Auditing Standards

School District No. 11-0020, Lyons, Nebraska

ROMANS WIEMER & ASSOCIATES
ROMANS, WIEMER & ASSOCIATES,
Certified Public Accountants, P.C.

RWA: klz

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rwacpas@windstream.net

October 21, 2021

Nebraska Department of Education
P.O. Box 94987
Lincoln, NE 68509-4987

RE: Lyons-Decatur Northeast School District (#11-0020)

During the performance of our audit fieldwork for the year ended August 31, 2021, we performed the following procedures regarding Lyons-Decatur Northeast School District's student membership and attendance reporting and testing the District's allocation of expenses to the appropriate school district/building level:

1. We documented the District's policies and procedures for collecting student membership and attendance data.
2. We determined that the District was following its policies and procedures for collecting student census data.
3. We determined attendance at the District is collected at least daily and calculated to the nearest hundredth of a day.
4. We determined the District maintains a cumulative attendance and membership record for each student.
5. We determined the cumulative attendance and membership records contain the date of enrollment, number of days or partial days in attendance and absent during each school year enrolled, and the date of withdrawal or graduation.
6. We traced student attendance reported in the Nebraska Department of Education's approved ADVISER data collection system to the District's student information system for the 2020-2021 school year.
7. We sampled 13 students from the ADVISER report for the year ended August 31, 2021 and traced the days enrolled, present, and absent to the District's information system.
8. Using the same sample of 13 students, we traced the students to their student enrollment files to verify that the student was documented as an enrolled student of the District for the dates claimed in the attendance record.
9. We sampled 46 General Fund disbursements, noting the District's allocation to the school district/building level. The District's allocation for 46 items sampled was appropriate.

Page 2

If you need additional information please call us at (402) 362-5597 or email us at rwacpas@windstream.net.

Sincerely,

ROMANS WIEMER & ASSOCIATES
ROMANS, WIEMER & ASSOCIATES,
Certified Public Accountants, P.C.

RWA: klz

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November 4, 2021

Board of Education
School District No. 11-0020
Lyons, Nebraska 68038

We have audited the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of School District No. 11-0020 of Lyons, Nebraska for the year ended August 31, 2021. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and, *Governmental Auditing Standards*, as well as certain information related to the planed scope and timing of our audit. We have communicated such information in our letter to you dated September 7, 2021. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Matters

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting polices used by School District No. 11-0020 of Lyons, Nebraska are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing polices was not changed during 2021. We noted no transactions entered into by School District No. 11-0020 of Lyons, Nebraska during the year which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. School District No. 11-0020 of Lyons, Nebraska financial statements are prepared on the modified cash basis which does limit the use of estimates.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter date October 21, 2021.

Management Consultations with Other independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consolation involves application of an accounting principle to School District No. 11-0020 of Lyons, Nebraska's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as School District No. 11-0020 of Lyons, Nebraska's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

We were engaged to report on the Budgetary Comparison Schedules, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with the modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America (U.S. GAAP), the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying

accounting records used to prepare the financial statements or to the financial statements themselves.

We were not engaged to report on Schedule of Modified Cash Disbursements for Operational Expenses Compared to Budget – General Fund and Schedule(s) of County Treasurer’s funds held in trust for the School District, which accompany the financial statements but are not RSI. Such information has not been subjected to auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it

Restriction on Use

This information is intended solely for the information and use of the Board of Education and management of School District No. 11-0020 of Lyons, Nebraska and is not intended to be, and should not be, used by anyone other than these specified parties.

ROMANS, WIEMER & ASSOCIATES,
Certified Public Accountants, P.C.

RWA: klz

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

AGREEMENT made as of the 6th day of December in the year 2021
(In words, indicate day, month, and year.)

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

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

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

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

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

Lyons-Decatur Northeast Schools - Demolition of three-story building and the construction of an addition to the elementary and secondary school
(Paragraphs deleted)

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

Clark & Enersen, Inc.
1010 Lincoln Mall, Suite 200
Lincoln, Nebraska 68508
(402) 477-9291

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.

Init.

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User Notes:

(845301291)

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

§ 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.)

The physical scope of the Project has yet to be set, but it is anticipated that it will be located at or in the vicinity of the Owner's existing facility located at 400 S. 5th Street, Lyons, Nebraska. Additional details and design will be developed, including without limitation based on input from the Owner, the Architect, and the Construction Manager, prior to execution of Exhibit A (the Guaranteed Maximum Price Amendment).

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

Init.

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User Notes:

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

TBD

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

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 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.)

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

None.

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

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

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

Lindsey Beaudette, Superintendent
Lyons-Decatur Northeast School
400 S. 5th Street
Lyons, NE 68038
402-687-2363
lbeaudette@lyonsdecaturschools.org

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

Init.

The School Board

§ 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:

TBD

.3 Other, if any:

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

TBD

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

Tim Ripp, AIA, Principal
Clark & Enersen
1010 Lincoln Mall, Suite 200
Lincoln, Nebraska 68508
(402) 477-9291
tim.ripp@clarkenersen.com

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

Brian Dembowski, Project Manager
Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108
(402) 553-1804
mpfister@boydjones.biz

§ 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.)

Provided by Construction Manager for review and approval by Owner.

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

Competitive bidding.

§ 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 may agree to adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation.

Init.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- .1 Modifications issued after execution of the Agreement;
- .2 Addenda or Riders issued prior to or in conjunction with the execution of the Agreement, with the Addenda or Riders bearing the latest date taking precedence;
- .3 This Agreement;
- .4 The supplementary conditions;
- .5 The General Conditions of the Contract for Construction;
- .6 The Drawings and Specifications; and
- .7 The Schedule of Contractor's Qualifications, Clarifications, and Assumptions, if any.

§ 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 reasonable 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; to use the Construction Manager's best efforts; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.3.4 During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations to the Owner and Architect with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The

Init.

Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and furnish to the Owner, the Owner's Representative, and the Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier. The Construction Manager shall not contract with any subcontractor or supplier that the Owner or the Architect has so objected.

§ 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

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ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from foreseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such foreseeable causes or anticipated details include, but are not limited to, refinement of details of design within the scope of standard, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any foreseeable causes or anticipated details which exceed the Construction Manager's Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a

specific line item for Owner's contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: 50% shall be the Construction Manager's Contingency and 50% shall be Owner's Contingency.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 Detailed construction schedule.
- .7 The Date of Final Completion upon which the proposed Guaranteed maximum Price is based, which date shall be acceptable to Owner.
- .8 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the estimated Cost of the Work shall include the Construction Manager's Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 3.2.2, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use, to cover costs, per Section 3.2.2.

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

§ 3.2.6 The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date of commencement of the Work is the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended.

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

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

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager from which the Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Exhibit A to AIA Document A133-2019.

§ 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 on the first business day after the Contractor’s receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended and shall constitute day zero (“0”) of the stated Completion Time for Work under the GMP Amendment, Exhibit A.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner, upon written request from the Construction Manager, shall provide to Construction Manager, or shall ask the Architect or other appropriate consultant to provide to Construction Manager, as soon as practically possible, such existing information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner’s objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment, systems sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

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

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

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid negligently damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during 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 shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 4.2 Owner's Designated Representative

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

(Paragraph deleted)

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Architect, which the Owner has retained. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

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.)

\$12,500.00

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Construction Manager acknowledges that none of Owner's resources, including without limitation the compensation for Preconstruction Phase services described above, shall be used in any way whatsoever for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question, including without limitation any bond initiative related to financing of the Project.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable

(Paragraphs deleted)

thirty (30) days following the Construction Manager's presentation to the Owner of an Application for Payment that is approved and signed by the Architect, provided that such Architect-approved Application for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Architect-approved Application for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

1.9% of the Cost of Work.

provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self-performs for the Project; and further provided that no Construction Manager fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work. All charges, if any, for General Conditions (those items marked by an "X" in the column entitled "General Conditions" on the General Conditions Matrix, Attachment C) shall be included in the Construction Manager's fee. No additional charges or reimbursement for any costs Construction Manager designates as General Conditions shall be allowed; all such General Conditions shall be included in the Construction Manager's fee. All reimbursement for profit; indirect costs; home office overhead and expenses; all home office accounting, audit, legal, and data processing fees and expenses; shall be deemed to be included in the Construction Manager's fee.

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

Construction Manager's Fee for changes in the Work resulting in a net increase or decrease to the Cost of the Work shall be adjusted in an amount equal to the product of the percentage fee in section 6.1.2 multiplied by such net increase or decrease.

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

See the A201 General Conditions of the Contract, as amended.

§ 6.1.5 Rental rates for Construction Manager-owned equipment that are not furnished as part of subcontracted work by Construction Manager shall be in the amounts as are set forth on the rental rate schedule attached as Attachment B – Equipment Rates, which rates shall be in effect for the duration of the performance of the Work, and shall be charged to the Owner as set forth in Section 7.5.2.

§ 6.1.6 Liquidated damages, if any:

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

See section 11.3 below.

§ 6.1.7 Other:

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

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner.

§ 6.3 Changes in the Work

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

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. Adjustments to the Guaranteed Maximum Price on account of Owner-approved changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be calculated in accordance with Article 7 of A201-2017, as amended; provided, however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by the Owner's Representative. Adjustments to the Guaranteed Maximum Price shall only be considered if presented in accordance with the Contract Documents prior to performing additional Work and incurring additional Costs.

(Paragraphs deleted)

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. However, "Cost of the Work" shall not include costs incurred because of the negligence, breach of contract, or other misconduct of Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of Work, shall be included in the Guaranteed Maximum Price.

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

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

§ 7.2 Labor Costs

§ 7.2.1 Labor in the direct employ of the Contractor; the Contractor's employees when stationed at the field office, in whatever capacity employed; employees engaged on the road expediting the production or transportation of material and equipment; and supervisory employees from the principal or branch office performing the functions as noted herein, but only for that portion of their time required for the Work. All rates are listed on Attachment A.

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(Paragraphs deleted)

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 9.1, as amended, shall be treated as Work performed by a Subcontractor under Section 7.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted to the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 7 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager.

§ 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, aid to construction, clean-up, barricades, utility consumption charges, utility assessments, utility fees, capital facilities fees, power company fees, sewer frontage fees, 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 materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

(Paragraph deleted)

§ 7.6 Miscellaneous Costs

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

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

§ 7.6.1.2 Sales, use, or similar taxes imposed by a governmental authority that are related to the Work only when Owner is not exempt from such taxes and the Construction Manager is liable.

§ 7.6.2 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.

§ 7.6.3 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.

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

§ 7.6.5 Intentionally deleted.

(Paragraph deleted)

§ 7.6.6 Deposits lost directly resulting from the Owner's actions or decisions.

§ 7.6.7 Intentionally deleted.

(Paragraphs deleted)

§ 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 Intentionally deleted.

§ 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 negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Delay damages or claims; and
- .11 Storage costs, unless with prior written Owner approval.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from subcontractors for the performance of all major elements of the Work. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which proposals will be accepted. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

§ 9.1.1 If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 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 five (5) years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702-1992 for approval. Continuation sheets shall be submitted on AIA Form G703-1992. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within thirty (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, provided that such Certificate for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Certificate for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

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

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

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

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

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

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

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

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

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

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

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

§ 11.1.8 Retainage

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

(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%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

If the Work from which retainage is withheld is fifty percent complete and if the Contractor has performed Work in accordance with the provisions of the Contract Documents, no more than five percent (5%) of any additional progress payment may be withheld as retainage **if** the Contractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the Work. Except as provided otherwise herein, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

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

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

(Paragraph deleted)

§ 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 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

- .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

(Paragraph deleted)

§ 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, including the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, but excluding the Construction Manager's responsibility 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, and the Construction Manager has provided all documents required by Sections 3.5.7 and 9.10.2 of AIA Document A201-2017, as amended, and the Owner's Board of Education has voted to accept the Work and approve Final Payment.

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

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

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article

9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017.

§ 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 dispute resolution as provided in the Contract Documents of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for dispute resolution shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request dispute resolution as provided in the Contract Documents within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after approval from the Owner’s Board of Education.

(Paragraph deleted)

§ 11.3 Time

§ 11.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager’s failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are and will continue to be impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion that such sums are liquidated direct damages and shall not be construed as a penalty and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

§ 11.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to Two Thousand Five-Hundred Dollars (\$2,500.00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 11.3.3 Timely Final Completion is an essential condition of this Agreement, Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of One Thousand Dollars (\$1,000.00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 11.3.4 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 11.4 Interest

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

(Insert rate of interest agreed upon, if any.)

twelve percent (12%) per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 The Construction Manager and Owner may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the Construction Manager and Owner.

(Paragraphs deleted)

§ 12.2

(Paragraphs deleted)

Notwithstanding any reference to arbitration contained in this Agreement, neither the Construction Manager nor the Owner shall be obligated to resolve any Claim through arbitration.

(Paragraphs deleted)

§ 12.3 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.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 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.)

Zero Dollars (\$0.00)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document

A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

For the Preconstruction Phase and the Construction Phase, the Construction Manager shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™–2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

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

(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 Governing Law

Section 13.1 of AIA Document A201–2017 applies to both the Preconstruction and Construction Phases.

§ 14.6 Fair Labor Standards

The Construction Manager shall maintain fair labor standards throughout the performance of this Contract. The Construction Manager shall file with the Owner a statement that the Construction Manager is complying with, and will continue to comply with, fair labor standards in the pursuit of its business and in the execution of the Contract. Any additional contract entered into between Construction Manager and Owner shall include a provision that in the execution of the contract, fair labor standards shall be maintained. For purposes of this section, the phrase "fair labor standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Construction Manager.

§ 14.7 Payment of Unemployment Compensation

The Construction Manager shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.

§ 14.8 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

Init.

§ 14.9 The Construction Manager shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009, and who are physically performing services within the State of Nebraska. If the Construction Manager employs or contracts with any Subcontractor in connection with this Agreement, the Construction Manager shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

§ 14.10 Indemnification

§ 14.10.1 To the extent permitted by applicable law but without waiving any rights under any applicable state governmental immunity act, the parties hereby agrees to indemnify, defend, and hold the other, and any subsidiary, parent, or affiliate corporations of the Owner, or other persons or entities designated by the other, and their respective directors, officers, agents, employees, and designees (collectively, the "Indemnitees") harmless from all losses, claims, liabilities, injuries, damages, and expenses, including attorneys' fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including: but not limited to any one or more of the Indemnitees) arising out of or occurring in connection with the performance or lack of performance by the indemnifying party of its duties and obligations under or pursuant to this Agreement whether or not any other party, contributes to such performance or lack of performance by the indemnifying party. Where both Parties, including their respective employers or agents, participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault.

§ 14.10.2 The indemnification obligation under this Section 14.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Construction Manager or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 14.11 The Construction Manager and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

§ 14.12 The Construction Manager and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Construction Manager and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Construction Manager and all Subcontractor, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach. The District may suspend or terminate the Construction Manager, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

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

§ 14.14 The Construction Manager's federal employer identification number is: 47-0482284.

§ 14.15 The Construction Manager acknowledges that the Owner must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

§ 14.16 When present on Owner's property, Construction Manager and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall:

- .1 not used.
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and

- .6 comply with all of the school district’s rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

§ 14.17 The Construction Manager shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by Owner. Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement, together with all written modifications, amendments and riders signed by both parties, represents the entire agreement between the Owner and the Construction Manager concerning the subject matter herein and supersedes all prior negotiations, representations or agreements, whether written or oral, between the Owner and the Construction Manager. This Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed, as amended
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds, as amended
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as amended, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

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

(Paragraphs deleted)

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

Attachment A – Labor Rates
Attachment B – Equipment Rates
Attachment C – General Conditions and Reimbursable Matrix

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

| Lindsey Beaudette Superintendent
(Printed name and title)

Tim Meyer Senior Vice President of Operations
(Printed name and title)



Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:05:59 CT on 12/06/2021.

PAGE 1

AGREEMENT made as of the 6th day of December in the year 2021

...

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

...

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

...

Lyons-Decatur Northeast Schools - Demolition of three-story building and the construction of an addition to the elementary and secondary school

The
The Architect:

...

Clark & Enersen, Inc.
1010 Lincoln Mall, Suite 200
Lincoln, Nebraska 68508
(402) 477-9291

PAGE 2

The physical scope of the Project has yet to be set, but it is anticipated that it will be located at or in the vicinity of the Owner's existing facility located at 400 S. 5th Street, Lyons, Nebraska. Additional details and design will be developed, including without limitation based on input from the Owner, the Architect, and the Construction Manager, prior to execution of Exhibit A (the Guaranteed Maximum Price Amendment).

PAGE 3

TBD

...

TBD

...

TBD

...

TBD

...

TBD

...

None.

...

Lindsey Beaudette, Superintendent
Lyons-Decatur Northeast School
400 S. 5th Street
Lyons, NE 68038
402-687-2363
lbeaudette@lyonsdecaturschools.org

PAGE 4

The School Board

...

TBD

...

TBD

...

TBD

...

Tim Ripp, AIA, Principal
Clark & Enersen
1010 Lincoln Mall, Suite 200
Lincoln, Nebraska 68508
(402) 477-9291
tim.ripp@clarkenersen.com

...

Brian Dembowski, Project Manager
Boyd Jones Construction Company

950 S. 10th Street, Suite 100
Omaha, Nebraska 68108
(402) 553-1804
mpfister@boydjones.biz

...

Provided by Construction Manager for review and approval by Owner.

...

Competitive bidding.

...

§ 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 may~~ agree to adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. ~~The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~

PAGE 5

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. ~~If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.~~ To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- .1 Modifications issued after execution of the Agreement;
- .2 Addenda or Riders issued prior to or in conjunction with the execution of the Agreement, with the Addenda or Riders bearing the latest date taking precedence;
- .3 This Agreement;
- .4 The supplementary conditions;
- .5 The General Conditions of the Contract for Construction;
- .6 The Drawings and Specifications; and
- .7 The Schedule of Contractor's Qualifications, Clarifications, and Assumptions, if any.

...

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 reasonable 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; to use the Construction Manager's best efforts; 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.

PAGE 6

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

...

§ 3.1.3.4 During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations to the Owner and Architect 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.

PAGE 7

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

...

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the ~~Project~~Project and furnish to the Owner, the Owner's Representative, and the Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or

suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier. The Construction Manager shall not contract with any subcontractor or supplier that the Owner or the Architect has so objected.

PAGE 8

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from foreseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such foreseeable causes or anticipated details include, but are not limited to, refinement of details of design within the scope of standard, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any foreseeable causes or anticipated details which exceed the Construction Manager's Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a specific line item for Owner's contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: 50% shall be the Construction Manager's Contingency and 50% shall be Owner's Contingency.

PAGE 9

- .6 Detailed construction schedule.
- .7 The Date of Final Completion upon which the proposed Guaranteed maximum Price is based, which date shall be acceptable to Owner.
- .8 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the ~~Construction Manager shall include a contingency~~ estimated Cost of the Work shall include the Construction Manager's Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover ~~those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order~~ costs arising under Section 3.2.2, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use, to cover costs, per Section 3.2.2.

...

§ 3.2.6 The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date of commencement of the Work is the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended.

...

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

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Exhibit A to AIA Document A133-2019.

PAGE 10

§ 3.3.1.2 The Construction Phase shall commence ~~upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties.~~ The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment. on the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended and shall constitute day zero ("0") of the stated Completion Time for Work under the GMP Amendment, Exhibit A.

...

§ 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 ~~Owner, upon written request from the Construction Manager, shall provide to Construction Manager, or shall ask the Architect or other appropriate consultant to provide to Construction Manager, as soon as practically possible, such existing information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.~~ expandability requirements, special equipment, systems sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

PAGE 11

§ 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 precaution relating to the~~

performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid negligently damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

...

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

...

§ 4.2.1 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.

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 Construction Manager's services shall be provided in conjunction with the services of an Architect, which the Owner has retained. The terms of the agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement. Architect shall be available for inspection by the Construction Manager upon request.

...

\$12,500.00

Construction Manager acknowledges that none of Owner's resources, including without limitation the compensation for Preconstruction Phase services described above, shall be used in any way whatsoever for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question, including without limitation any bond initiative related to financing of the Project.

§ 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
------------------------	------

§ 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 (—) 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.

PAGE 12

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

~~—%—thirty (30) days following the Construction Manager's presentation to the Owner of an Application for Payment that is approved and signed by the Architect, provided that such Architect-approved Application for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Architect-approved Application for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.~~

...

1.9% of the Cost of Work.

provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self-performs for the Project; and further provided that no Construction Manager fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work. All charges, if any, for General Conditions (those items marked by an "X" in the column entitled "General Conditions" on the General Conditions Matrix, Attachment C) shall be included in the Construction Manager's fee. No additional charges or reimbursement for any costs Construction Manager designates as General Conditions shall be allowed; all such General Conditions shall be included in the Construction Manager's fee. All reimbursement for profit; indirect costs; home office overhead and expenses; all home office accounting, audit, legal, and data processing fees and expenses; shall be deemed to be included in the Construction Manager's fee.

...

Construction Manager's Fee for changes in the Work resulting in a net increase or decrease to the Cost of the Work shall be adjusted in an amount equal to the product of the percentage fee in section 6.1.2 multiplied by such net increase or decrease.

...

See the A201 General Conditions of the Contract, as amended.

~~§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed —percent (—%) of the standard rental rate paid at the place of the Project that are not furnished as part of subcontracted work by Construction Manager shall be in the amounts as are set forth on the rental rate schedule attached as Attachment B – Equipment Rates, which rates shall be in effect for the duration of the performance of the Work, and shall be charged to the Owner as set forth in Section 7.5.2.~~

PAGE 13

See section 11.3 below.

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner.

...

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. Adjustments to the Guaranteed Maximum Price on account of Owner-approved changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be calculated in accordance with Article 7 of A201-2017, as amended; provided, however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by the Owner’s Representative. Adjustments to the Guaranteed Maximum Price shall only be considered if presented in accordance with the Contract Documents prior to performing additional Work and incurring additional Costs.

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

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

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

...

§ 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. However, "Cost of the Work" shall not include costs incurred because of the negligence, breach of contract, or other misconduct of Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of Work, shall be included in the Guaranteed Maximum Price.

...

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

...

~~§ 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. Labor in the direct employ of the Contractor; the Contractor’s employees when stationed at the field office, in whatever capacity employed; employees engaged on the road expediting the production or transportation of material and equipment; and supervisory employees from the principal or branch office performing the functions as noted herein, but only for that portion of their time required for the Work. All rates are listed on Attachment A.~~

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

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

~~(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)~~

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

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

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

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 9.1, as amended, shall be treated as Work performed by a Subcontractor under Section 7.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted to the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 7 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager.

PAGE 14

~~§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, aid to construction, clean-up, barricades, utility consumption charges, utility assessments, utility fees, capital facilities fees, power company fees, sewer frontage fees, 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.~~

...

~~§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies, materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

~~§ 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.~~

...

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

~~§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval. Sales, use, or similar taxes imposed by a governmental authority that are related to the Work only when Owner is not exempt from such taxes and the Construction Manager is liable.~~

~~§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is liable required by the Contract Documents to pay.~~

~~§ 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, 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.~~

~~§ 7.6.4 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. Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

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

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

~~§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval. Deposits lost directly resulting from the Owner's actions or decisions.~~

~~§ 7.6.7 Costs of document reproductions and delivery charges. Intentionally deleted.~~

~~§ 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.~~

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~~§ 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. Intentionally deleted.~~

§ 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 negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others.

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.6 Except as provided in Section 7.7.3 of this Agreement, ~~costs~~ 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;

...

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

.10 Delay damages or claims; and

.11 Storage costs, unless with prior written Owner approval.

...

~~§ 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.Owner.

...

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from subcontractors for the performance of all major elements of the Work. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which proposals will be accepted. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.~~

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

~~difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.~~

...

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~~ five (5) years after final payment, or for such longer period as may be required by law.

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

~~(Federal, state or local laws may require payment within a certain period of time.)~~ The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702-1992 for approval. Continuation sheets shall be submitted on AIA Form G703-1992. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within thirty (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, provided that such Certificate for Payment is received by the Owner in time to be included in the board packet for the next regularly scheduled board meeting and such board meeting actually occurs. Any payment not made within twenty (20) days following the next regularly scheduled meeting after the Certificate for Payment is timely received by the Owner shall bear interest at the rate of twelve (12) percent per annum.

...

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

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

...

ten percent (10%)

...

If the Work from which retainage is withheld is fifty percent complete and if the Contractor has performed Work in accordance with the provisions of the Contract Documents, no more than five percent (5%) of any additional progress payment may be withheld as retainage if the Contractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the Work. Except as provided otherwise herein, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (I) any of the Owner's rights to retainage in connection with other payments to the Contractor of (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

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

§ 11.1.9 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 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. 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 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. progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

- .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

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

...

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

...

- .3 a final Certificate for Payment has been issued by the ~~Architect in accordance with Section 4.2.2.2~~ Architect, and the Construction Manager has provided all documents required by Sections 3.5.7 and 9.10.2 of AIA Document A201-2017, as amended, and the Owner's Board of Education has voted to accept the Work and approve Final Payment.

...

§ 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-dispute resolution as provided in the Contract Documents~~ of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for ~~mediation-dispute resolution~~ shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request ~~mediation-dispute resolution as provided in the Contract Documents~~ within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

approval from the Owner's Board of Education.

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

§ 11.3 Interest Time

§ 11.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are and will continue to be impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion that such sums are liquidated direct damages and shall not be construed as a penalty and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the

agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

§ 11.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to Two Thousand Five-Hundred Dollars (\$2,500.00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 11.3.3 Timely Final Completion is an essential condition of this Agreement, Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of One Thousand Dollars (\$1,000.00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 11.3.4 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 11.4 Interest PAGE 21

%—twelve percent (12%) per annum

...

§ 12.1 Initial Decision MakerThe Construction Manager and Owner may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the Construction Manager and Owner.

§ 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 Notwithstanding any reference to arbitration contained in this Agreement, neither the Construction Manager nor the Owner shall be obligated to resolved any Claim through arbitration.

— Litigation in a court of competent jurisdiction

— Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction. § 12.3 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.

...

- .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 the Architect's estimate of the probable Cost of the Work upon its completion; and

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

...

Zero Dollars (\$0.00)

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For the Preconstruction Phase and the Construction Phase, the Construction Manager shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™-2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 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 —(\$ —) for each occurrence and —(\$ —) 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 —(\$ —) 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 —(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit.~~

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

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

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

~~§ 14.3.2 Construction Phase~~

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

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

...

~~§ 14.5 Other provisions: **Governing Law**~~

~~Section 13.1 of AIA Document A201-2017 applies to both the Preconstruction and Construction Phases.~~

~~§ 14.6 Fair Labor Standards~~

~~The Construction Manager shall maintain fair labor standards throughout the performance of this Contract. The Construction Manager shall file with the Owner a statement that the Construction Manager is complying with, and will continue to comply with, fair labor standards in the pursuit of its business and in the execution of the Contract. Any additional contract entered into between Construction Manager and Owner shall include a provision that in the execution of the contract, fair labor standards shall be maintained. For purposes of this section, the phrase "fair labor~~

standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Construction Manager.

§ 14.7 Payment of Unemployment Compensation

The Construction Manager shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.

§ 14.8 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

§ 14.9 The Construction Manager shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009, and who are physically performing services within the State of Nebraska. If the Construction Manager employs or contracts with any Subcontractor in connection with this Agreement, the Construction Manager shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

§ 14.10 Indemnification

§ 14.10.1 To the extent permitted by applicable law but without waiving any rights under any applicable state governmental immunity act, the parties hereby agrees to indemnify, defend, and hold the other, and any subsidiary, parent, or affiliate corporations of the Owner, or other persons or entities designated by the other, and their respective directors, officers, agents, employees, and designees (collectively, the "Indemnitees") harmless from all losses, claims, liabilities, injuries, damages, and expenses, including attorneys' fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including: but not limited to any one or more of the Indemnitees) arising out of or occurring in connection with the performance or lack of performance by the indemnifying party of its duties and obligations under or pursuant to this Agreement whether or not any other party, contributes to such performance or lack of performance by the indemnifying party. Where both Parties, including their respective employers or agents, participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault.

§ 14.10.2 The indemnification obligation under this Section 14.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Construction Manager or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 14.11 The Construction Manager and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

§ 14.12 The Construction Manager and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Construction Manager and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Construction Manager and all Subcontractor, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach. The District may suspend or terminate the Construction Manager, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

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

§ 14.14 The Construction Manager's federal employer identification number is: 47-0482284.

§ 14.15 The Construction Manager acknowledges that the Owner must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

§ 14.16 When present on Owner's property, Construction Manager and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall:

- .1 not used.
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the school district's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

§ 14.17 The Construction Manager shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by Owner. Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

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§ 15.1 This Agreement represents the entire and integrated Agreement, together with all written modifications, amendments and riders signed by both parties, represents the entire agreement between the Owner and the Construction Manager concerning the subject matter herein and supersedes all prior negotiations, representations or agreements, ~~either written or oral~~ whether written or oral, between the Owner and the Construction Manager. This Agreement may be amended only by written instrument signed by both ~~Owner and the Owner and the Construction Manager~~.

...

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if ~~executed~~executed, as amended
- .3 AIA Document A133™-2019, Exhibit B, Insurance and ~~Bonds~~Bonds, as amended
- .4 AIA Document A201™-2017, General Conditions of the Contract for ~~Construction~~Construction, as amended
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, as amended, dated as indicated below:

...

(Check all boxes that apply.)

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

...

Attachment A – Labor Rates
Attachment B – Equipment Rates
Attachment C – General Conditions and Reimbursable Matrix

PAGE 26



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:05:59 CT on 12/06/2021 under Order No. 4919093188 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A133[™] – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the day of in the year , is incorporated into the accompanying AIA Document A133[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 6th day of December in the year 2021 (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT:**

(Name and address or location)

Lyons-Decatur Northeast Schools - Demolition of three-story building and the construction of an addition to the elementary and secondary school.

THE OWNER:

(Name, legal status, and address)

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

TABLE OF ARTICLES

- A.1 **GUARANTEED MAXIMUM PRICE**
- A.2 **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- A.3 **INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 **CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ A.1.1.6 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)
------	-----------------------	-------------------------

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of execution of this Amendment.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion**

§ A.2.3.1 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.)

Init.

/

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

[] By the following date:

§ A.2.3.2 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
-----------------	-----------------------------

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
-------	------	-------

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item

Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

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

OWNER (Signature)

Lindsey Beaudette Superintendent

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Tim Meyer Senior Vice President of Operations

(Printed name and title)

Init.

/

Additions and Deletions Report for AIA[®] Document A133[™] – 2019 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:05:25 CT on 12/06/2021.

PAGE 1

This Amendment dated the day of in the year , is incorporated into the accompanying AIA Document A133[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 6th day of December in the year 2021 (the "Agreement")

...

Lyons-Decatur Northeast Schools - Demolition of three-story building and the construction of an addition to the elementary and secondary school.

...

(Name, legal status, and address)

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

...

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

PAGE 4

Lindsey Beaudette Superintendent

Tim Meyer Senior Vice President of Operations

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:05:25 CT on 12/06/2021 under Order No. 4919093188 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®]

Document A133™ – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 6th day of December in the year 2021
(In words, indicate day, month and year.)

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

Lyons-Decatur Northeast Schools
Demolition of three-story building and the construction of an addition to the elementary and secondary school.

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

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

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

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

TABLE OF ARTICLES

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

ARTICLE B.1 GENERAL

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

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

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

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.

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

§ B.2.3.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the 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 B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 **Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, theft, vandalism, malicious mischief, or windstorm.

(Paragraphs deleted)

(Table deleted)

§ B.2.3.1.2

(Paragraphs deleted)

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

(Table deleted)

(Paragraph deleted)

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

(Paragraphs deleted)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 **Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner that evidence compliance with the requirements in this Article B.3 at the following times: (1) within thirty (30) days of execution of the Agreement; (2) prior to commencement of the Work; (3) upon renewal or replacement of each required policy of insurance; and (4) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability, Automobile Liability, and excess or umbrella liability policy or policies. The Owner's acceptance of the Construction Manager's certificates of insurance does not relieve any of the Construction Manager's responsibilities under the Agreement and shall not constitute a waiver of the Construction Manager's obligations to provide insurance as required by the Agreement and this Exhibit. The Owner has the right to receive copies of any of the Construction Manager's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ B.3.1.2 **Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Construction Manager, and such large deductible or self-insured retention is subject to the Owner's written approval. The Owner has the right to require a proper form of collateral for any such large deductible or self-insured retention.

§ B.3.1.3 **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, including without limitation the insurance required by Sections B.3.2.2, B.3.2.3, and B.3.2.6, to include the Owner for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured

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User Notes:

(962211686)

coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The Owner shall continue as an additional insured, upon the terms herein, for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct.

To be clear, the Construction Manager shall NOT include the Owner as an additional insured on the Professional Liability insurance coverage required by Section B.3.2.8, if applicable, or the Pollution Liability Coverage required by Section B.3.2.9, if applicable, to the extent that such policy(ies) include an so-called "insured-versus-insured" exclusion.

§ B.3.1.4 Notice of Cancellation or Non-Renewal

The Construction Manager (or its insurance carrier(s)) must provide written notice to the Owner no less than thirty (30) days prior to any cancellation or non-renewal of the Construction Manager's insurance. Within three (3) business days of the date the Construction Manager becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section B.3, the Construction Manager shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Construction Manager, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right (but not the obligation) to suspend the services until the lapse in coverage has been cured by the procurement of replacement coverage by the Construction Manager. The furnishing of notice by the Construction Manager shall not relieve the Construction Manager of any contractual obligation to provide any required coverage.

§ B.3.1.5 Among other grounds to withhold payment, the Construction Manager's failure to fully comply with all insurance requirements in this Section B.3 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Construction Manager. The Owner has the right, but not necessarily the obligation, to declare the Construction Manager's failure to fully comply with the insurance requirements in this Section B.3 a material breach of the Construction Manager's obligations under this Agreement.

§ B.3.1.6 All of the coverage limits stated in this Section B.3 are minimum insurance limits and shall not be construed in any way to limit the liability of the Construction Manager.

§ B.3.1.7 The Construction Manager's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.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 and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- IX . 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.)

§ B.3.2.2 Commercial General Liability

§ B.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 no less broad than the ISO CG 00 01 coverage form for claims including, without limitation,

- .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.

§ B.3.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .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.

§ B.3.2.3 The Construction Manager's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 Any aggregate limit under the Construction Manager's General Liability insurance shall, by endorsement, apply to this Project separately.

§ B.3.2.3 Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Millions Dollars (\$1,000,000) combined single limit 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. On behalf of itself and its automobile liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.5 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. On behalf of itself and its employers' liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.6 Commercial Umbrella/Excess Liability Insurance with limits of at least Four Million Dollars (\$4,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Five Million Dollars (\$5,000,000) per occurrence. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections B.3.2.2.1, B.3.2.3, and B.3.2.5 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. On behalf of itself and its commercial umbrella/excess liability

insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager 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 One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. The coverage required in this section shall be maintained for at least ten (10) years following termination of the Agreement or the date of Substantial Completion, whichever is later.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.3 Subcontractor's Insurance Coverage

The Construction Manager agrees to require Subcontractors to comply with the insurance provisions required of the Construction Manager pursuant to this Agreement unless the Construction Manager and Owner mutually agree in writing to modify these requirements for Subcontractors whose work is of relatively small scope, provided however that each Subcontractor's policy limits for the following lines of coverage shall be modified as follows: (a) Employers' Liability Insurance limits shall be at least Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) each employee, and Five Hundred Thousand Dollars (\$500,000) policy limit, and (b) Commercial Umbrella/Excess Liability Insurance limits shall be at least One Million Dollars (\$1,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Two Million Dollars (\$2,000,000) per occurrence.

The Construction Manager agrees that it will contractually obligate its Subcontractors to advise the Construction Manager promptly of any changes or lapses of the requisite insurance coverages and the Construction Manager agrees to promptly advise Owner of any such notices that the Construction Manager receives from its Subcontractors. The Construction Manager agrees that it will contractually obligate its Subcontractors to indemnify and hold harmless Owner to the same extent that Construction Manager is required to do so as provided in this Agreement. The Construction Manager assumes all responsibility for monitoring Subcontractor contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

(Paragraphs deleted)

§ B.3.4 Performance Bond and Payment Bond

§ B.3.4.1 To secure the faithful performance of the work, the Construction Manager will provide a performance bond with a penal sum no less than 100% of the GMP through a corporate surety company. The terms of the performance bond shall be substantially identical to those in the attached AIA A312-2010 Performance Bond as amended by the Owner.

§ B.3.4.2 To secure all of the Construction Manager's payment obligations that arise on the project, the Construction Manager will provide a payment bond with a penal sum no less than 100% of the GMP through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the performance of the Contract. The terms of the payment bond shall be substantially identical to those in the attached AIA A312-2010 Payment Bond as amended by the Owner and in compliance with NEB. REV. STAT. §§ 52-118 to 118.02.

§ B.3.4.3 The corporate surety or sureties issuing the required performance bond and payment bond must be lawfully authorized to issue insurance in the jurisdiction where the Project is located and must have an A.M. Best rating of not less than A- IX.

§ B.3.4.4 The cost of the performance bond and payment bond shall be included in the Cost of the Work.

(Table deleted)

§ B.3.4.5 The Construction Manager shall deliver the required bonds to the Owner within one week of the Construction Manager's execution of the Agreement and the GMP, whichever is later.

§ B.3.4.6 The Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Additions and Deletions Report for AIA[®] Document A133™ – 2019 Exhibit B

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

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PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 6th day of December in the year 2021

...

Lyons-Decatur Northeast Schools
Demolition of three-story building and the construction of an addition to the elementary and secondary school.

...

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

...

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

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

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

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

Cause of Loss

Sub-Limit

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

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

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

~~§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.~~ The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

~~§ B.2.3.3 Insurance for Existing Structures~~

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

~~§ B.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.)

~~§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,~~ to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

~~§ B.2.4.2 Ordinance or Law Insurance,~~ for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

~~§ B.2.4.3 Expediting Cost Insurance,~~ for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

§ B.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

§ B.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

§ B.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

§ B.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner 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.)

§ B.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ B.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

...

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner ~~evidencing that evidence~~ compliance with the requirements in this Article B.3 at the following times: (1) within thirty (30) days of execution of the Agreement; (2) prior to commencement of the Work; ~~(2)-(3)~~ upon renewal or replacement of each required policy of insurance; and ~~(3)-(4)~~ upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability-Liability.

Automobile Liability, and excess or umbrella liability policy or policies. The Owner's acceptance of the Construction Manager's certificates of insurance does not relieve any of the Construction Manager's responsibilities under the Agreement and shall not constitute a waiver of the Construction Manager's obligations to provide insurance as required by the Agreement and this Exhibit. The Owner has the right to receive copies of any of the Construction Manager's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Construction Manager, and such large deductible or self-insured retention is subject to the Owner's written approval. The Owner has the right to require a proper form of collateral for any such large deductible or self-insured retention.

§ B.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, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured primary and excess or umbrella policies for Commercial General liability and Automobile Liability, including without limitation the insurance required by Sections B.3.2.2, B.3.2.3, and B.3.2.6, to include the Owner for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Owner shall continue as an additional insured, upon the terms herein, for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct.

To be clear, the Construction Manager shall NOT include the Owner as an additional insured on the Professional Liability insurance coverage required by Section B.3.2.8, if applicable, or the Pollution Liability Coverage required by Section B.3.2.9, if applicable, to the extent that such policy(ies) include an so-called "insured-versus-insured" exclusion.

§ B.3.1.4 Notice of Cancellation or Non-Renewal

The Construction Manager (or its insurance carrier(s)) must provide written notice to the Owner no less than thirty (30) days prior to any cancellation or non-renewal of the Construction Manager's insurance. Within three (3) business days of the date the Construction Manager becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section B.3, the Construction Manager shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Construction Manager, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right (but not the obligation) to suspend the services until the lapse in coverage has been cured by the procurement of replacement coverage by the Construction Manager. The furnishing of notice by the Construction Manager shall not relieve the Construction Manager of any contractual obligation to provide any required coverage.

§ B.3.1.5 Among other grounds to withhold payment, the Construction Manager's failure to fully comply with all insurance requirements in this Section B.3 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Construction Manager. The Owner has the right, but not necessarily the obligation, to declare the Construction Manager's failure to fully comply with the insurance requirements in this Section B.3 a material breach of the Construction Manager's obligations under this Agreement.

§ B.3.1.6 All of the coverage limits stated in this Section B.3 are minimum insurance limits and shall not be construed in any way to limit the liability of the Construction Manager.

§ B.3.1.7 The Construction Manager's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

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§ B.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 and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- IX. 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:

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$) each occurrence, (\$) general aggregate, and (\$) 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 no less broad than the ISO CG 00 01 coverage form for claims including, without limitation,~~

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§ B.3.2.2.3 The Construction Manager's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.2.4 Any aggregate limit under the Construction Manager's General Liability insurance shall, by endorsement, apply to this Project separately.

§ B.3.2.3 Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than ~~(\$) per accident, One Millions Dollars (\$1,000,000) combined single limit~~ 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. On behalf of itself and its automobile liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in 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. Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.5 Workers' Compensation at statutory limits. 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. On behalf of itself and its employers' liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.6 Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$) policy limit.~~ Commercial Umbrella/Excess Liability Insurance with limits of at least Four Million Dollars (\$4,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Five Million Dollars (\$5,000,000) per occurrence. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections B.3.2.2.1, B.3.2.3, and B.3.2.5 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. On behalf of itself and its commercial umbrella/excess

liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

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§ B.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. One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. The coverage required in this section shall be maintained for at least ten (10) years following termination of the Agreement or the date of Substantial Completion, whichever is later.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) Two Million Dollars (\$2,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate.

...

§ B.3.3 Construction Manager's Other Insurance Coverage ~~Subcontractor's Insurance Coverage~~

The Construction Manager agrees to require Subcontractors to comply with the insurance provisions required of the Construction Manager pursuant to this Agreement unless the Construction Manager and Owner mutually agree in writing to modify these requirements for Subcontractors whose work is of relatively small scope, provided however that each Subcontractor's policy limits for the following lines of coverage shall be modified as follows: (a) Employers' Liability Insurance limits shall be at least Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) each employee, and Five Hundred Thousand Dollars (\$500,000) policy limit, and (b) Commercial Umbrella/Excess Liability Insurance limits shall be at least One Million Dollars (\$1,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Two Million Dollars (\$2,000,000) per occurrence.

The Construction Manager agrees that it will contractually obligate its Subcontractors to advise the Construction Manager promptly of any changes or lapses of the requisite insurance coverages and the Construction Manager agrees to promptly advise Owner of any such notices that the Construction Manager receives from its Subcontractors. The Construction Manager agrees that it will contractually obligate its Subcontractors to indemnify and hold harmless Owner to the same extent that Construction Manager is required to do so as provided in this Agreement. The Construction Manager assumes all responsibility for monitoring Subcontractor contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to

purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- ~~§ B.3.3.2.2 Railroad Protective Liability Insurance~~, with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate, for Work within fifty (50) feet of railroad property.
- ~~§ B.3.3.2.3 Asbestos Abatement Liability Insurance~~, with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- ~~§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~
- ~~§ B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.~~
- ~~§ B.3.3.2.6 Other Insurance~~
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

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:

§ B.3.4.1 To secure the faithful performance of the work, the Construction Manager will provide a performance bond with a penal sum no less than 100% of the GMP through a corporate surety company. The terms of the performance bond shall be substantially identical to those in the attached AIA A312-2010 Performance Bond as amended by the Owner.

§ B.3.4.2 To secure all of the Construction Manager's payment obligations that arise on the project, the Construction Manager will provide a payment bond with a penal sum no less than 100% of the GMP through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the performance of the Contract. The terms of the payment bond shall be substantially identical to those in the attached AIA A312-2010 Payment Bond as amended by the Owner and in compliance with NEB. REV. STAT. §§ 52-118 to 118.02.

§ B.3.4.3 The corporate surety or sureties issuing the required performance bond and payment bond must be lawfully authorized to issue insurance in the jurisdiction where the Project is located and must have an A.M. Best rating of not less than A- IX.

~~(Specify type and penal sum of bonds.)~~ **§ B.3.4.4** The cost of the performance bond and payment bond shall be included in the Cost of the Work.

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

§ B.3.4.5 The Construction Manager shall deliver the required bonds to the Owner within one week of the Construction Manager's execution of the Agreement and the GMP, whichever is later.

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.

§ B.3.4.6 The Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.





AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Lyons-Decatur Northeast Schools
400 S. 5th Street
Lyons, NE 68038

THE OWNER:

(Name, legal status and address)

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

THE CONTRACTOR:

(Name, legal status and address)

Boyd Jones Construction Company (Corporation)
950 S. 10th St., Suite 100
Omaha, NE 68108

THE ARCHITECT:

(Name, legal status and address)

Clark & Enersen, Inc.
1010 Lincoln Mall, Suite 200
Lincoln, Nebraska 68508
(402) 477-9291

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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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For purposes of the Project and the Contract Documents, Contractor as used in the AIA Document A201-2017 shall have the same meaning as Construction Manager as used in AIA Document A133-2009.

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 Contractor (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.

§ 1.1.9 Approved

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When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Architect shall be understood.

§ 1.1.10 Provide

When the word "provide," including derivatives, is used, it shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications.

§ 1.1.11 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract that modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

§ 1.1.12 Bulletins

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract that request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

§ 1.1.13 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) or discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 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. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

§ 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.

§ 1.3 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, except as provided otherwise in any agreement between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or 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, Architect's consultants', or any other party's 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.

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

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 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. 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 the Owner fails to make payments to the Contractor as the Contract Documents require or a change in the Work materially changes the Contract Sum. 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, 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.

§ 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.

§ 2.6 EXTENT OF OWNER RIGHTS

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

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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 a professional and safe manner and in accordance with the Contract Documents. If the Contractor finds that any of the Contract Documents are not per federal, state, and local laws, regulations, and ordinances, then Contractor will notify Architect within fifteen (15) days.

§ 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.

§ 3.2 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. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the visible conditions and limitations under which the Work is to be performed, including (i) the location, visible condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment. The Owner assumes no responsibility or liability for the safety of the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 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 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. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work.

§ 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,

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techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall 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.

§ 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 shall 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, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 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 and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 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 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. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's prior reviews, and preconstruction services for the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. 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 shall employ a competent superintendent 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 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.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 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 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 and Architect.

§ 3.10.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 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.

§ 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

§ 3.13.1 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.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 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.

§ 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, 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.

§ 3.18.1.1 To the fullest extent permitted by law the Owner shall indemnify and hold harmless the Contractors, its officers, directors, or members, subcontractors, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable 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 Owner, Architect, or others retained by the Owner 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 Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

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 final payment is due from Owner, and (with the Owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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 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 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.

§ 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 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, 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

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work 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

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Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 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 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of 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.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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.

§ 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 or reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 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 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.

§ 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. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 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.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 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.

§ 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 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.

§ 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.

§ 8.3 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 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the

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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 Architect may determine to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor and (ii) is of a duration not less than one (1) day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the work, (iii) loss of productivity, or (v) other similar claims (items I through iv herein collectively referred to in this Section 8.3.2 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner, any separate contractor of Owner, or anyone for whose acts the Owner is responsible, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

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

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 day of full execution of this Agreement, 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.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner, the Construction Manager or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If

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any trade breakdown had been initially approved and subsequently used but was later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner 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.

§ 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 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .3 Intentionally deleted.
- .4 Payment shall not include any charges for overhead or profit on stored materials.
- .5 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 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. Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to Contractor.

§ 9.3.4 Contractor shall submit Applications for Payment using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate

Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Nebraska covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Nebraska and may justify termination of Contractor's Contract with Owner.

§ 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.

§ 9.4.3 Notwithstanding any other provision in this Agreement, the issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or 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;
- .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.

§ 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.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment 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, 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 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 shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 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

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' 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.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the 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; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the 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.

§ 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 Contractor, 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 Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 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 Contractor'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 Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor 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 Contractor 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 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 Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging 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 Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, 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 Contractor 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.

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- § 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 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 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. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice. The Contractor shall not use explosives or store them on Owner's property without written approval from the Owner and reasonable advance notice to the Architect.

§ 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.

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§ 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

Injury or Damage to Person or Property. If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other parties to investigate the matter.

§ 10.2.9 When present on the Owner's property, the Contractor, Subcontractors, a Sub-subcontractor, or anyone directly or indirectly employed by or representing any of them, shall

- .1 Intentionally deleted;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the Owner's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.11 When all or a portion of the Work is suspended for any reasons, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 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 concealed and undisclosed hazardous material or substance (as defined by the contract documents) 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. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 If Contractor imports hazardous materials onto the project site, then Contractor hereby indemnifies and holds harmless the Owner, its consultants, trustees, officers, agents and employees, against any claims arising out of or related to such importation, including but not limited to costs and expenses the Owner incurs for remediation of a material or substance the contractor brings to the site, as provided for in subparagraph 3.18.

§ 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. 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 Intentionally omitted.

§ 10.3.6 Intentionally omitted.

§ 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 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Nebraska in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
- .2 Bonds shall be executed by a responsible surety licensed in Nebraska, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
- .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
- .4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
- .5 Every Bond under this Section 11 .1.2 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - .1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - .2 The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

§ 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 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.

§ 11.1.5 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.

§ 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,

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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.

§ 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. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor

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shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project 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 anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 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 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. 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.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction 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 laws of the State of Nebraska. Any litigation shall be conducted in the state or federal court that has jurisdiction over the county in which the Project is located.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 or set forth elsewhere in the Contract Documents, 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. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, 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 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 bear interest from the date payment is due at the rate the parties agree upon in writing.

§ 13.6 GENERAL PROVISIONS

§ 13.6.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.6.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.6.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract Documents.

§ 13.6.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or in the applicable subcontract.

§ 13.7 NO ORAL WAIVER

§ 13.7 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.8 BACKGROUND CHECKS

The Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the Owner. The Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

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; and
- .3 Because the Owner has not made Payment on a Certificate of Payment within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, 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 30 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 20 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, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2

(Paragraphs deleted)
Intentionally omitted.

§ 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 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

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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; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with the concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 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.

(Paragraphs deleted)

§ 15.1.7 The parties agree to waive all claims against each other for consequential damages that may arise out of or relate to this Agreement. The provision of this section shall also apply to the termination of this Agreement and survive such termination.

§ 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, a decision by the Initial Decision Maker 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 on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 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.

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation or any other form of dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 Mediation

§ 15.3.1 The parties may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim, dispute, or other matter that is not mediated or that is not resolved in mediation will be subject to litigation pursuant to Section 13.1.

(Paragraphs deleted)

§ 15.4 No Arbitration

§ 15.4.1 The Contractor and the Owner shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract. Any reference herein to arbitration in connection with such Claims or disputes is hereby deemed void.

(Paragraphs deleted)

Additions and Deletions Report for **AIA® Document A201® – 2017**

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

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Lyons-Decatur Northeast Schools
400 S. 5th Street
Lyons, NE 68038

...

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

THE CONTRACTOR:

(Name, legal status and address)

Boyd Jones Construction Company (Corporation)
950 S. 10th St., Suite 100
Omaha, NE 68108

THE ARCHITECT:

(Name, legal status and address)

Clark & Enersen, Inc.
1010 Lincoln Mall, Suite 200
Lincoln, Nebraska 68508
(402) 477-9291

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For purposes of the Project and the Contract Documents, Contractor as used in the AIA Document A201-2017 shall have the same meaning as Construction Manager as used in AIA Document A133-2009.

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§ 1.1.9 Approved

When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Architect shall be understood.

§ 1.1.10 Provide

When the word "provide," including derivatives, is used, it shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications.

§ 1.1.11 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract that modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

§ 1.1.12 Bulletins

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract that request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

§ 1.1.13 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) or discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by 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. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

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§ 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~~ copyrights, except as provided otherwise in any agreement between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or 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' Architect's, Architect's consultants', or any other party's~~ Architect's, Architect's consultants', or any other party's reserved rights.

...

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement,

(iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

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§ 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; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a require or a change in the Work materially changes the Contract Sum. 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, Sum, 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.

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§ 2.6 EXTENT OF OWNER RIGHTS

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents: a professional and safe manner and in accordance with the Contract Documents. If the Contractor finds that any of the Contract Documents are not per federal, state, and local laws, regulations, and ordinances, then Contractor will notify Architect within fifteen (15) days.

...

§ 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. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the visible conditions and limitations under which the Work is to be performed, including (i) the location, visible condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment. The Owner assumes no responsibility or liability for the safety of the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

...

§ 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 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. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work.

...

§ 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 written 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.

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§ 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~~ shall 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.

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§ 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 and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 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 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. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's prior reviews, and preconstruction services for the Projec.

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§ 3.10.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

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~~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.~~ § 3.13.1 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.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

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§ 3.18.1.1 To the fullest extent permitted by law the Owner shall indemnify and hold harmless the Contractors, its officers, directors, or members, subcontractors, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable 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 Owner, Architect, or others retained by the Owner 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.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this 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, construction, until the final payment is due from Owner, and (with the Owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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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. § 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work 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.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

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§ 5.4.2 Upon such assignment, if the Work-If the Work in connection with a subcontract has been suspended for more than 30 days, thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from any increase in direct costs incurred by such Subcontractor as a result of the suspension.

...

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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§ 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~~ apparent or reasonably discoverable.

...

§ 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. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

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§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

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§ 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 15.1.6.2, 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 Architect may ~~determine~~ determine to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted

for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor and (ii) is of a duration not less than one (1) day.

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§ 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. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the work, (iii) loss of productivity, or (v) other similar claims (items I through iv herein collectively referred to in this Section 8.3.2 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner, any separate contractor of Owner, or anyone for whose acts the Owner is responsible, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

...

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.

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 day of full execution of this Agreement, 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.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner, the Construction Manager or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If any trade breakdown had been initially approved and subsequently used but was later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

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§ 9.3.1 At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance

with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner 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.

...

§ 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~~ Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .3 Intentionally deleted.
- .4 Payment shall not include any charges for overhead or profit on stored materials.
- .5 Payments for materials or equipment stored on or off the site shall be conditioned upon ~~compliance by the Contractor with submission by the Contractor of bills of sale or such other procedures~~ satisfactory to the Owner to establish the Owner's title to such materials ~~and or~~ 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, including~~ applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 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. Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to Contractor.

§ 9.3.4 Contractor shall submit Applications for Payment using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for

Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Nebraska covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Nebraska and may justify termination of Contractor's Contract with Owner.

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§ 9.4.3 Notwithstanding any other provision in this Agreement, the issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

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§ 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. Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' 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.
§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' 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.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 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; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

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§ 9.10.1 Upon receipt of the Contractor'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 Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

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§ 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 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. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice. The Contractor shall not use explosives or store them on Owner's property without written approval from the Owner and reasonable advance notice to the Architect.

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~~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. Injury or Damage to Person or Property. If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

§ 10.2.9 When present on the Owner's property, the Contractor, Subcontractors, a Sub-subcontractor, or anyone directly or indirectly employed by or representing any of them, shall

- .1 Intentionally deleted;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the Owner's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of

any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.11 When all or a portion of the Work is suspended for any reasons, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

...

§ 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 concealed and undisclosed hazardous material or substance (as defined by the contract documents) 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. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

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§ 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. If Contractor imports hazardous materials onto the project site, then Contractor hereby indemnifies and holds harmless the Owner, its consultants, trustees, officers, agents and employees, against any claims arising out of or related to such importation, including but not limited to costs and expenses the Owner incurs for remediation of a material or substance the contractor brings to the site, as provided for in subparagraph 3.18.

§ 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. site. 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. Intentionally omitted.

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally omitted.

...

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Nebraska in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
- .2 Bonds shall be executed by a responsible surety licensed in Nebraska, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
- .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
- .4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
- .5 Every Bond under this Section 11 .1.2 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - .1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - .2 The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

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~~§ 11.1.5 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.~~

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The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, 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. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project 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 anyone for whose acts they may be liable and for which the Contractor is responsible.

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§ 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 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 and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.~~

...

§ 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. Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.~~

...

~~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 laws of the State of Nebraska. Any litigation shall be conducted in the state or federal court that has jurisdiction over the county in which the Project is located.~~

...

§ 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, Section 13.2.2~~ or set forth elsewhere in the Contract Documents, 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.~~ Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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§ 13.3.1 ~~Duties~~ Except as expressly provided in the Contract Documents, 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.

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in ~~writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ writing.

§ 13.6 GENERAL PROVISIONS

§ 13.6.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar

items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.6.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.6.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract Documents.

§ 13.6.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or in the applicable subcontract.

§ 13.7 NO ORAL WAIVER

§ 13.7 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.8 BACKGROUND CHECKS

The Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the Owner. The Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

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- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; and
- .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 the Owner has not made Payment on a Certificate of 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. Documents.

...

§ 14.1.4 If the Work is stopped for a period of ~~60~~30 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~~20 additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds~~ costs of finishing the Work, including compensation for the Architect's Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, ~~such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid~~

~~balance, the Contractor exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.~~

...

§ 14.3.2 ~~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.~~ Intentionally omitted.

...

§ 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. Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.~~

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§ 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; later; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with the concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.~~

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§ 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, 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.~~

§ 15.1.7 The parties agree to waive all claims against each other for consequential damages that may arise out of or relate to this Agreement. The provision of this section shall also apply to the termination of this Agreement and survive such termination.

§ 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 a decision by the Initial Decision Maker~~ 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.

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§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation or any other form of dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 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.~~ The parties may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim, dispute, or other matter that is not mediated or that is not resolved in mediation will be subject to litigation pursuant to Section 13.1.

§ 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 binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution 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 No Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry

Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

The Contractor and the Owner shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract. Any reference herein to arbitration in connection with such Claims or disputes is hereby deemed void.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:05:50 CT on 12/06/2021 under Order No. 4919093188 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A312™ – 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

OWNER:

(Name, legal status and address)

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

CONSTRUCTION CONTRACT

Date:

Amount: \$ 0.00

Description:

(Name and location)

Lyons-Decatur Northeast Schools

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

SURETY

Company: *(Corporate Seal)*

Signature: _____

Name and

Title:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property (or claims, demands, liens, or suits that a claimant would have against the Owner's property if the Owner was not a political subdivision) by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 Intentionally omitted.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The sole fact that the real property upon which the Project is located may not be subject to a mechanic's lien due to its ownership by a political subdivision shall not disqualify an individual or entity from coming within the definition of "Claimant" herein. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

Init.

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User Notes:

(729050680)

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Additions and Deletions Report for AIA[®] Document A312™ – 2010

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:05:31 CT on 12/06/2021.

PAGE 1

Boyd Jones Construction Company
950 S. 10th Street, Suite 100
Omaha, Nebraska 68108

...

Lyons-Decatur Northeast Schools, a/k/a Burt County School District 11-0020
400 S. 5th Street
Lyons, NE 68038

...

Amount: \$ 0.00

...

Lyons-Decatur Northeast Schools

PAGE 2

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property (or claims, demands, liens, or suits that a claimant would have against the Owner's property if the Owner was not a political subdivision) by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

PAGE 3

~~§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. Intentionally omitted.~~

...

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term

Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The sole fact that the real property upon which the Project is located may not be subject to a mechanic's lien due to its ownership by a political subdivision shall not disqualify an individual or entity from coming within the definition of "Claimant" herein. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:05:31 CT on 12/06/2021 under Order No. 4919093188 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A312™ – 2010, Payment Bond, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



Attachment A
As of 4/1/2021

Boyd Jones Construction Co.

Trade	Normal Wage Rate/HR	Overtime Wage Rate/HR	Sunday Wage Rate/HR
Skilled Laborer	49.98	68.34	87.72
Carpenter	69.36	94.86	122.40
Concrete Finisher	69.36	94.86	122.40
Milwright	78.54	108.12	138.72
Welder	68.34	94.86	121.38
Foreman	75.48	105.06	133.62
Crane operator	89.76	123.42	158.10
Equipment Operator	72.42	100.98	128.52
Superintendent	107.10	107.10	127.50
General Superintendent	130.56		
Project Engineer	88.74		
Project Manager	147.90		
Senior Project Manager	163.20		
Project Executive	183.60		
Estimator	145.86		
Preconstruction Manager	163.20		
VDC Manager	85.68		
Cost Accountant	107.10		
Contract Administrator	66.30		
Safety Manager	102.00		
Safety Director	130.56		
clerk of the works	59.16	80.58	104.04
Insurance	1.5% of Labor Cost		
Small Tools	5% of Labor Cost		

(3% Annual Adjustment for Inflation Rounded to the Nearest Dollar for All Rates)

Beginning April 1 Each Year)



EQUIPMENT RATES - ATTACHMENT B

As of 4/1/2021

Description	Hourly Rate	Daily Rate	Weekly Rate	Type
Backhoe		464.55	1,574.00	BH
Forklift-lull 844		525.00	1,365.00	FL
Forklift-JLG Skytrac 10K		761.25	1,933.05	FLS
Mini Excavator		316.05	1,198.00	ME
Skidsteer		379.05	1,000.00	SK
Street Sweeper Box		160.00	500.00	SSB
Skidsteer Snowplow Attachment		82.50	250.00	SSP
Office Trailer 8x30			175.00	OT8
Office Trailer 10x40			200.00	OT10
Office Trailer 12x60			250.00	OT12
20' Conex Office			175.00	OT20
40' Conex Office			200.00	OT40
Conex Box Container 20 ft.			52.00	CB20
Conex Box Container 40 ft.			82.00	CB40
Job Trailer-Storage			82.00	JTS
Tow Trailer-Flat or Closed		66.00	236.25	TT
Pickup		197.40	325.00	TR
Dump Box		65.10	171.15	DB
Pavement Breaker		243.00	1,069.00	PB
Utility Tractor		371.00	1,110.00	UT
Utility Terrain Vehicle		170.10	295.00	UTV
Pile Driver			4,800.00	PD
Manbasket-lull		122.00	427.00	MB
Roller Compactor		162.50	608.00	RC
Dump Truck		438.90	1,238.00	DT
Jump/Plate Compactor		90.00	320.00	JPC
Pressure Washer		81.00	289.80	PR
Air Compressor- tow		181.65	539.70	ACT
Air Compressor- portable		39.00	101.00	ACP
Welder- gas engine		171.00	598.00	WD Gas
Welder-TIG/Dynasty		111.25	447.00	WD TIG
Welder- Multimatic		87.50	306.00	WD MLT
Plasma Cutter		109.20	400.00	PC
35 kw Generator		294.00	963.00	GN35
5000w Generator		100.00	253.00	GN5000
Material Hoist/Winch		120.75	262.50	MH

Power Station- step down		84.50	326.50
36" fans		50.00	112.00
Trash Chute		55.00	136.40
Demo Saw Concrete		109.00	413.00
Walk Behind Concrete Saw		90.00	263.00
Walk Behind Sweeper			1,076.25
Cutting Torch Set		51.50	156.50
Power Trowel		87.00	250.00
Concrete Vibrators		68.00	270.00
Rotary Hammer		75.60	220.50
Jackhammer		81.90	247.80
0-149K BTU Heater		63.00	264.00
150K-399K BTU Heater		134.40	503.00
400K-750K BTU Heater		166.00	579.00
Insulated Blankets		6.00	22.00
Trash Pump		71.40	211.00
Water Pump		62.00	247.00
Scaffolding		183.30	667.44
Concrete Jersey Barriers			26.00
Yodock Barriers			34.50
Safety Cone Barriers			5.00
Concrete Bucket		107.00	299.00
Table Saw		40.20	121.50
Laser Level		110.25	310.80
Total Station			1,088.75
Theodolite		60.75	187.50
Computer			40.00
Copier- small (3-1 Printer)			16.00
Copier- large			55.00
Project Management Software			200.00
Radios			64.00
Chipping Hammer		47.30	124.00
Core Drills w/ bits		94.50	361.00
Negative Air Machine		84.50	272.00
Air Monitor		78.25	
Blower		68.25	200.5
Tripod		131.00	
Hydroseeder			500.00
Delivery Truck	12.00		
Delivery Trailer	9.00		
Delivery Dump Truck	76.25		
Safety Cart			274.00
Drone		90.00	

PS
FN36
TC
DSC
WBCS
WBS
CT
PT
CV
RH
JH
0-149K BTU
150-399BTU
400-700K
IB
TP
WP
SCF
CJB
YB
SC
CONB
TS
LL
TOTS
TD
CP
CPS
CPL
PROC
RD
CH
CD
NAM
AM
BL
TRIP
HS
DL TR
DL TT
DL DP
TOC
Drone

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

Attachment C - GENERAL CONDITIONS MATRIX

Johnson County Central Schools

Cost Category	Fee & General Conditions	Cost of Work	Comments
Home Office Expenses			
Home Office Overheads	X		
Business Development	X		
Training & Development	X		
Human Resources	X		
Accounting	X		
Home Office Printing/Copying	X		
Home Office Supplies	X		
Licenses	X		
Insurance & Bonds			
Project Specific Insurance		X	
Payment and Performance Bonds		X	
Precon/Construction Phase Staff			
Project Executive		X	
Project Manager		X	
Superintendent(s)		X	
Project Engineer(s)		X	
Safety Director		X	
Preconstruction Manager	X		
Estimators	X		
VDC Manager		X	
Contract Administrator		X	
Jobsite Operations			
Trailers/Job Office		X	
Storage Trailers		X	
Cell Phones		X	
Computer		X	
Office Supplies		X	
Vehicles, Fuel, Maintenance		X	Superintendent Truck Only
Travel Expenses/Per Diem		X	
Document Reproduction		X	
Site Maintenance		X	
Postage & Couriers		X	
Site Signage		X	
First Aid		X	
Temporary Toilets		X	
Water, Ice, Cups		X	
Dumpsters		X	
Permits		X	
Materials Layout		X	
Field Engineering and Equipment		X	
Testing		X	
Security		X	
Surveying & Layout		X	
Temporary Utilities		X	
Temporary Fencing		X	
Interim Cleaning		X	
Final Cleaning		X	
Temporary Partitions and Enclosures		X	
Fire Protection		X	
Temporary Roads		X	
Temporary Parking		X	
Temporary Laydown		X	
Parking Fees		X	
Scaffolding		X	
Safety Rails		X	
Pump Water		X	
Traffic Control		X	
Taxes		X	
Tariff Surcharges		X	
Progress Photos		X	
Drone/VDC		X	
Information Technology		X	
Commissioning		X	
Mobilization		X	
Demobilization		X	

Fee & General Conditions Matrix

Preconstruction Services

- Create & Implement Construction Management Plan
- Coordinate Document Flow & Communication with Team
- Integrate CM Services into Design Coordination Meetings
- Budget Updates & Estimating

General Conditions & Requirements

Preconstruction	Cost of Work/ Direct Costs	Fee
-----------------	-------------------------------	-----