

Board of Education Special Meeting
Monday, February 15, 2021 5:00 PM
Jr-Sr High School Conference Room - Room
202
611 West 7th Street
Wayne, Nebraska 68787

- I. Call the Meeting to Order
 - a. Pledge of Allegiance
 - b. Announce Open Meeting Act Posting and Location - Posted at Wayne Community Schools, Published in the Wayne Herald (2/11/2021), and online: www.wayneschools.org
 - c. Action on Absence and Roll Call
 - d. Approval of Agenda - The Board may enter Executive Session to discuss any matter for which Executive Session is lawful and appropriate.
 - e. Personnel
- II. New Business
 - a. Construction Manager at Risk Agreement - Discuss, Consider, and Take all Necessary Action with Regard to Approving the Construction Manager at Risk Agreement for the Proposed Restroom and Other Renovation to the High School
 - b. ESU1 Service Contract - Discuss, Consider, and Take Necessary Action on ESU 1 Service Contract for the 2021-22 school year
 - c. Providence Medical Center Contract for Services - Discuss, Consider, and Take Necessary Action on a Contract with Providence Medical Center for OT & PT Services
 - d. Temporary Changes to Employee Flex Plan
- III. Superintendent
- IV. Adjournment

AGENDA

Discuss, consider and take all necessary action with regard to approving the construction manager at risk agreement for the proposed restroom and other renovations to the high school.

MOTION

MOTION by _____ that the Board of Education of this School District should and does hereby approve the construction manager at risk agreement between the School District and BCC Builders, LLC for the proposed construction of restroom and other renovations to the high school, in the in the form on file with official School District records and as presented at this meeting or with such changes as are deemed necessary and in the best interest of the School District and approved by the Superintendent of Schools, and further hereby delegates authority to and authorizes and directs the board president, or a designee, to sign, execute and deliver the agreement, any agreement amendments, change orders or other documents call for in such agreement, to pay the contract sum, and to take all other action necessary to carry such agreement into effect.

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

_____.

The following Board members voted against the same: _____.

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

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

DATED this 15th day of February, 2021.

WAYNE COUNTY SCHOOL DISTRICT 90-0017,
A/K/A WAYNE COMMUNITY SCHOOLS

BY: _____
President

ATTEST:

Secretary



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/12/21

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

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

PRODUCER NORTHEAST NEBRASKA INSURANCE POB 100 WAYNE, NE 68787	CONTACT NAME: Brett Kramer PHONE (A/C No. Ext): (402)375-2696 E-MAIL ADDRESS: bkramer@northeastnebraskainsurance.com	FAX (A/C, No): (402)375-5212	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED OCC BUILDERS, LLC DBA OTTE CONSTRUCTION 521 CENTENNIAL ROAD WAYNE NE 68787	INSURER A: EMC INSURANCE COMPANIES		25186
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	2X22033	04/01/20	04/01/21	EACH OCCURRENCE \$ 1,000.00 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100.00 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000.00 GENERAL AGGREGATE \$ 2,000.00 PRODUCTS - COMP/OP AGG \$ 2,000.00
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	2X22033	04/01/20	04/01/21	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000.00 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED RETENTION \$ 10,000	Y	Y	2X22033	04/01/20	04/01/21	EACH OCCURRENCE \$ 6,000.00 AGGREGATE \$ 6,000.00
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	Y	04/01/20	04/01/21	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500.00 E.L. DISEASE - EA EMPLOYEE \$ 500.00 E.L. DISEASE - POLICY LIMIT \$ 500.00

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

30 day notice of Cancellation endorsement has been added to this policy.

CERTIFICATE HOLDER**CANCELLATION**
 Wavne Community Schools
 611 W 7th St
 Wavne, NE 68787

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

AUTHORIZED REPRESENTATIVE

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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 ___ day of February in the year 2020
(In words, indicate day, month and year.)

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

Wayne Community Schools – High School Restroom Renovation Project, at the high school facility located at 611 W. 7th Street, Wayne, Nebraska.

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

Wayne County School District 90-0017, a/k/a Wayne Community Schools
A Nebraska political subdivision
611 W. 7th Street
Wayne, NE 68787

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

OCC Builders, LLC, a/k/a Otte Construction
A Nebraska limited liability company
521 Cencennial Road
Wayne, NE 68787

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, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER’S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2.

§ B.2.2 Liability Insurance

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

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.2.3 Required Property Insurance

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

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

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

Cause of Loss	Sub-Limit
Not applicable	

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

Coverage	Sub-Limit
Not applicable	

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

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions except the Owner shall be responsible for all losses not caused by the willful or negligent acts or omissions of Construction Manager or any employees, agents, representatives or subcontractors of Construction Manager.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner may purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

- § B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- § B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- § B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- § B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- § B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner may purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

Init.

[] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) at least five business days after execution of the Contract and prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Certificate 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 of Construction Manager's insurance policies, except Construction Manager's workers compensation insurance and professional liability insurance, if any. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies and any endorsements will not be canceled, reduced, or restricted for any reason, other than nonpayment of premium, until at least 30 calendar days' prior written notice of such cancellation, reduction, or restriction has been given to the Owner and Construction Manager. If any of the insurance coverages are required to remain in force after final payment, an additional certificate of insurance, policy, and endorsement evidencing continuation of such insurance coverage, including coverage for completed operations, shall be submitted with the final Certificate for Payment, as required by AIA A201 General Conditions as amended for this Project, and thereafter upon renewal or replacement of such coverage. Information concerning reduction or restriction of coverage on account of revised limits or claims paid under the General Aggregate, or cancellation or expiration of the insurance, shall be furnished by written notice to the Owner from the Construction Manager within three business days of the date Construction Manager knew or should have known of the cancellation, reduction, or restriction. At least 30 calendar days prior to the date of expiration of any required insurance policy, Construction Manager shall provide Owner written notice of the impending expiration. In addition, Construction Manager shall also provide copies of all policies, declarations, and endorsements for such insurance to Owner as required by the AIA A201 General Conditions as amended for this Project. The Construction Manager shall retain all required certificates of insurance for the duration of the Project and for five years thereafter.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. If the insurance required by this Section B.3.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager and all Subcontractors shall cause the commercial general liability, automobile liability, excess liability, and any other insurance required by the Agreement, with the exception of Workers' Compensation insurance and professional liability insurance if any, to be endorsed coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services

Init.

Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.1.4 Occurrence Basis. All insurance policies shall be written on an occurrence basis.

§ B.3.1.5 Waiver of Subrogation. All insurance policies shall contain a blanket waiver of subrogation in favor of Owner, Architect and Architect's consultants on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.1.6 Primary Non-Contributory. All insurance policies shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ B.3.1.7 All insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§ B.3.1.8 Subcontractor Insurance. The Construction Manager shall require all subcontractors to provide and maintain separate Commercial General Liability, Automobile Liability, Workers' Compensation, Employer's Liability, Professional Liability (if applicable), and Umbrella Excess Liability insurance coverages at the subcontractors' own expense. Such subcontractor insurance policies shall include and meet all of the requirements contained in this Article B.3.1.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager and each of the Construction Manager's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims which may arise out of, or result from, the Construction Manager's operations under the Contract whether such operations be by Construction Manager or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, in the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Nebraska. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions. The insurance required by this Section shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Insurance coverages shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Construction Manager's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The limits of liability for such insurance shall be in at least the following amounts as specified below.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence basis with annual unencumbered policy limits of not less than One Million Dollars (\$ 1,000,000.00) each occurrence, and Two Million Dollars (\$ 2,000,000.00) general aggregate, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury, with policy sub-limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property, in broad form and with policy sub-limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate;
- .4 bodily injury or property damage arising out of the Work and out of products and completed operations, with policy sub-limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, said coverage to be maintained for three years after Final Completion (to be maintained for a period of three years after Final Payment; Construction Manager shall continue to provide evidence of such coverage to Owner on an annual basis during this period and

- Owner shall be named by endorsement as an Additional Insured for such coverage) and must include Completed Operations coverage for Construction Manager, its subcontractors, and Owner;
- .5 the Construction Manager's contractual liability, including but not limited to construction contracts and subcontracts and Construction Manager's indemnity obligations under the General Conditions with policy sub-limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate;
 - .6 damages resulting from premises operations, with policy sub-limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; and
 - .7 General Aggregate per Project endorsement.

§ B.3.2.2 The Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Commercial General Liability miscellaneous provisions:

- .1 Deductible for the insurance policy shall not exceed \$10,000 per occurrence;
- .2 Additional insured endorsement shall cover vicarious liability, including completed operations;
- .3 Policy shall have removed fellow employee exclusion;
- .4 Policy may contain a modified notice of occurrence for supervisors and up; and
- .5 Policy may exclude coverage for asbestos, nuclear energy, engineer's and architect's errors and omissions.

§ B.3.2.3 Automobile Liability written on an occurrence basis covering vehicles owned, hired and non-owned, or any other vehicles used, by the Construction Manager, with a combined single policy limits of not less than One Million Dollars (\$ 1,000,000.00) per occurrence, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.5.1 A copy of a current certificate of insurance showing statutory workers' compensation insurance coverage for the Construction Manager's employees providing services on a Project is required for the duration of the Project. The Construction Manager must provide a certificate of insurance to the Owner upon execution of the Contract. If the coverage period shown on the Construction Manager's current certificate of insurance ends during the duration of the

Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of insurance with the Owner showing that coverage has been extended.

§ B.3.2.5.1.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by the Owner.

§ B.3.2.5.1.2 Persons providing services on the Project include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, direct or leased employees of any such entity, or direct or leased employees of any entity that furnishes persons to provide services on the Project.

§ B.3.2.5.1.3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ B.3.2.5.1.4 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

- .1 A separate and current certificate of insurance, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven days after receipt by the Construction Manager, a new certificate of insurance showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ B.3.2.5.1.5 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ B.3.2.5.1.6 The Construction Manager shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ B.3.2.5.1.7 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage for all of its employees providing services on the Project for the duration of the Project;
- .2 Provide to the Construction Manager, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- .3 Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4 Obtain from each other person with whom it contracts, and provide to the Construction Manager:
 - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
 - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

§ B.3.2.5.1.8 By signing the Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ B.3.2.5.1.9 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) disease each employee, and One Million Dollars (\$ 1,000,000.00) disease policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager, or any Subcontractor, is required to furnish professional services as part of the Work, the Construction Manager or Subcontractor, whichever is actually performing the Work, shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than the following:

- | | | | |
|----|---|-------------|-------------|
| .1 | Annual Unencumbered Limits of Liability (minimum) | Occurrence | Aggregate |
| | Contract Sum < \$500,000 | \$1,000,000 | \$1,000,000 |
| | \$ 500,000 ≤ Contract Sum < \$ 10,000,000 | \$2,000,000 | \$2,000,000 |
| | Contract Sum ≥ \$ 10,000,000 | \$3,000,000 | \$3,000,000 |
- .2 Aggregate per Project Endorsement
 - .3 Deductible for the insurance policy shall not exceed \$10,000 per occurrence;
 - .4 The insurance shall remain in full force and effect for a period of three (3) years after the termination of the Agreement or the completion of the Construction Manager's services hereunder, whichever occurs later in time;
 - .5 The obligation to maintain Professional Liability insurance coverage shall survive termination of the Agreement;
 - .6 The policies shall provide a blanket waiver of subrogation in favor of Owner and Architect; and
 - .7 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Professional Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Professional Liability insurance limits.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ B.3.2.10 [omit]

§ B.3.2.11 [omit]

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than One Million Dollar (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ B.3.2.13 Umbrella Excess Liability with policy limits of not less than the following amounts:

.1	Annual Unencumbered Limits of Liability (minimum)	Occurrence	Aggregate
	Contract Sum < \$500,000	\$1,000,000	\$1,000,000
	\$ 500,000 ≤ Contract Sum < \$ 10,000,000	\$2,000,000	\$2,000,000
	\$ 10,000,000 ≤ Contract Sum < \$ 25,000,000	\$5,000,000	\$5,000,000
	Contract Sum ≥ \$ 25,000,000	\$10,000,000	\$10,000,000

- .2 Aggregate per Project Endorsement; and
- .3 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Umbrella Excess Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Umbrella Excess Liability insurance limits.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Nebraska. The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- § B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)
- § B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.
- § B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- § B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- § B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[] **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the State of Nebraska, subject to the requirements of AIA A201 Article 11, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100% of the Guaranteed Maximum Price
Performance Bond	100% of the Guaranteed Maximum Price

The form of Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

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

 OWNER *(Signature)*
 Dr. Jeryl Nelson, President Board of Education
 (Printed name and title)

 CONSTRUCTION MANAGER *(Signature)*
 Keith Moje, President
 (Printed name and title)

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.

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 11:40:48 ET on 02/10/2021.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the day of February in the year 2020

...

Wayne Community Schools – High School Restroom Renovation Project, at the high school facility located at 611 W. 7th Street, Wayne, Nebraska.

...

(Name, legal status, and address)

Wayne County School District 90-0017, a/k/a Wayne Community Schools
A Nebraska political subdivision
611 W. 7th Street
Wayne, NE 68787

...

OCC Builders, LLC, a/k/a Otte Construction
A Nebraska limited liability company
521 Cencennial Road
Wayne, NE 68787

...

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

...

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

PAGE 2

~~§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the~~ The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located,~~ State of Nebraska, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on

a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. ~~This insurance shall include the interests of mortgagees as loss payees.~~

...

Not applicable

...

Not applicable

...

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or ~~retentions~~ retentions except the Owner shall be responsible for all losses not caused by the willful or negligent acts or omissions of Construction Manager or any employees, agents, representatives or subcontractors of Construction Manager.

PAGE 3

The Owner ~~shall~~ may purchase and maintain the insurance selected and described below.

...

The Owner ~~shall~~ may purchase and maintain the insurance selected below.

PAGE 4

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) at least five business days after execution of the Contract and prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final ~~Application-Certificate~~ Certificate for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies insured all of Construction Manager's insurance policies, except Construction Manager's workers compensation insurance and professional liability insurance, if any. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies and any endorsements will not be canceled, reduced, or restricted for any reason, other than nonpayment of premium, until at least 30 calendar days' prior written notice of such cancellation, reduction, or restriction has been given to the Owner and Construction Manager. If any of the insurance coverages are required to remain in force after final payment, an additional certificate of insurance, policy, and endorsement evidencing continuation of such insurance coverage, including coverage for completed operations, shall be submitted with the final Certificate for Payment, as required by AIA A201 General Conditions as amended for this Project, and thereafter upon renewal or replacement of such coverage. Information concerning reduction or restriction of coverage on account of revised limits or claims paid under the General Aggregate, or cancellation or expiration of the insurance, shall be furnished by written notice to the Owner from the Construction Manager within three business days of the date Construction Manager knew or should have known of the cancellation, reduction, or restriction. At least 30 calendar days prior to the date of expiration of any required insurance policy, Construction Manager shall provide Owner written notice of the impending expiration. In addition, Construction Manager shall also provide copies of all policies, declarations, and endorsements for such insurance to Owner as required by the AIA A201 General Conditions as amended for this Project. The Construction Manager shall retain all required certificates of insurance for the duration of the Project and for five years thereafter.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. If the insurance required by this Section B.3.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager and all Subcontractors shall cause the commercial general liability, automobile liability, excess liability, and any other insurance required by the Agreement, with the exception of Workers' Compensation insurance and professional liability insurance if any, to be endorsed coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.1.4 Occurrence Basis. All insurance policies shall be written on an occurrence basis.

§ B.3.1.5 Waiver of Subrogation. All insurance policies shall contain a blanket waiver of subrogation in favor of Owner, Architect and Architect's consultants on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.1.6 Primary Non-Contributory. All insurance policies shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ B.3.1.7 All insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§ B.3.1.8 Subcontractor Insurance. The Construction Manager shall require all subcontractors to provide and maintain separate Commercial General Liability, Automobile Liability, Workers' Compensation, Employer's Liability, Professional Liability (if applicable), and Umbrella Excess Liability insurance coverages at the subcontractors' own expense. Such subcontractor insurance policies shall include and meet all of the requirements contained in this Article B.3.1.

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§ B.3.2.1 The Construction Manager and each of the Construction Manager's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims which may arise out of, or result from, the Construction Manager's operations under the Contract whether such operations be by Construction Manager or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, in the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. ~~State of Nebraska.~~ The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, ~~unless a different duration is stated below:~~
(If the Construction Manager is required to maintain insurance for a duration other than Conditions. The insurance required by this Section shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Insurance coverages shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Construction Manager's completed operations coverage, until the expiration of the period for correction of Work, state the duration.)

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The limits of liability for such insurance shall be in at least the following amounts as specified below.

...
§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with basis with annual unencumbered policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$) aggregate for products-completed operations hazard, One Million Dollars (\$ 1,000,000.00) each occurrence, and Two Million Dollars (\$ 2,000,000.00) general aggregate, providing coverage for claims including

- .2 personal injury and advertising ~~injury;~~injury, with policy sub-limits of not less than One Million Dollars (\$ 1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) aggregate;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such ~~property;~~property, in broad form and with policy sub-limits of not less than One Million Dollars (\$ 1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) aggregate;
- .4 bodily injury or property damage arising out of ~~completed operations;~~and the Work and out of products and completed operations, with policy sub-limits of not less than One Million Dollars (\$ 1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) aggregate, said coverage to be maintained for three years after Final Completion (to be maintained for a period of three years after Final Payment; Construction Manager shall continue to provide evidence of such coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage) and must include Completed Operations coverage for Construction Manager, its subcontractors, and Owner;
- .5 the Construction Manager's ~~indemnity obligations under Section 3.18 of the General Conditions;~~contractual liability, including but not limited to construction contracts and subcontracts and Construction Manager's indemnity obligations under the General Conditions with policy sub-limits of not less than One Million Dollars (\$ 1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) aggregate;
- .6 damages resulting from premises operations, with policy sub-limits of not less than One Million Dollars (\$ 1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) aggregate; and
- .7 General Aggregate per Project endorsement.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

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- .4 Claims for indemnity under ~~Section 3.18 of the General Conditions~~ arising out of injury to employees of the insured.
- ...
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.2.3 Commercial General Liability miscellaneous provisions:

- .1 Deductible for the insurance policy shall not exceed \$10,000 per occurrence;
- .2 Additional insured endorsement shall cover vicarious liability, including completed operations;
- .3 Policy shall have removed fellow employee exclusion;
- .4 Policy may contain a modified notice of occurrence for supervisors and up; and
- .5 Policy may exclude coverage for asbestos, nuclear energy, engineer's and architect's errors and omissions.

§ B.3.2.3 Automobile Liability covering ~~vehicles owned, and non-owned~~ written on an occurrence basis covering vehicles owned, hired and non-owned, or any other vehicles used, by the Construction Manager, with a combined single policy limits of not less than (\$) per accident, One Million Dollars (\$ 1,000,000.00) per occurrence, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, ~~provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in insurance.~~ In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

...

§ B.3.2.5.1 A copy of a current certificate of insurance showing statutory workers' compensation insurance coverage for the Construction Manager's employees providing services on a Project is required for the duration of the Project. The Construction Manager must provide a certificate of insurance to the Owner upon execution of the Contract. If the coverage period shown on the Construction Manager's current certificate of insurance ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of insurance with the Owner showing that coverage has been extended.

§ B.3.2.5.1.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by the Owner.

§ B.3.2.5.1.2 Persons providing services on the Project include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, direct or leased employees of any such entity, or direct or leased employees of any entity that furnishes persons to provide services on the Project.

§ B.3.2.5.1.3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ B.3.2.5.1.4 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

- .1 A separate and current certificate of insurance, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven days after receipt by the Construction Manager, a new certificate of insurance showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ B.3.2.5.1.5 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ B.3.2.5.1.6 The Construction Manager shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ B.3.2.5.1.7 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage for all of its employees providing services on the Project for the duration of the Project;
- .2 Provide to the Construction Manager, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- .3 Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4 Obtain from each other person with whom it contracts, and provide to the Construction Manager:
 - .1 A certificate of coverage, prior to the other person beginning work on the Project; and

- .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

§ B.3.2.5.1.8 By signing the Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ B.3.2.5.1.9 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) disease each employee, and One Million Dollars (\$ 1,000,000.00) disease policy limit.

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§ B.3.2.8 If the Construction Manager, or any Subcontractor, is required to furnish professional services as part of the Work, the Construction Manager or Subcontractor, whichever is actually performing the Work, shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate. the following:

<u>.1 Annual Unencumbered Limits of Liability (minimum)</u>	<u>Occurrence</u>	<u>Aggregate</u>
<u>Contract Sum < \$500,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>
<u>\$ 500,000 < Contract Sum < \$ 10,000,000</u>	<u>\$2,000,000</u>	<u>\$2,000,000</u>
<u>Contract Sum ≥ \$ 10,000,000</u>	<u>\$3,000,000</u>	<u>\$3,000,000</u>

- .2 Aggregate per Project Endorsement
- .3 Deductible for the insurance policy shall not exceed \$10,000 per occurrence;
- .4 The insurance shall remain in full force and effect for a period of three (3) years after the termination of the Agreement or the completion of the Construction Manager's services hereunder, whichever occurs later in time;
- .5 The obligation to maintain Professional Liability insurance coverage shall survive termination of the Agreement;
- .6 The policies shall provide a blanket waiver of subrogation in favor of Owner and Architect; and
- .7 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Professional Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Professional Liability insurance limits.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate. [omit]

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate. [omit]

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than One Million Dollar (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ B.3.2.13 Umbrella Excess Liability with policy limits of not less than the following amounts:

<u>.1 Annual Unencumbered Limits of Liability (minimum)</u>	<u>Occurrence</u>	<u>Aggregate</u>
<u>Contract Sum < \$500,000</u>	<u>\$1,000,000</u>	<u>\$1,000,000</u>
<u>\$ 500,000 < Contract Sum < \$ 10,000,000</u>	<u>\$2,000,000</u>	<u>\$2,000,000</u>
<u>\$ 10,000,000 < Contract Sum < \$ 25,000,000</u>	<u>\$5,000,000</u>	<u>\$5,000,000</u>
<u>Contract Sum ≥ \$ 25,000,000</u>	<u>\$10,000,000</u>	<u>\$10,000,000</u>

.2 Aggregate per Project Endorsement; and

.3 For purposes of this subsection, "Contract Sum" shall mean (a) the amount under the Construction Manager's contract with the Owner when determining the Construction Manager's Umbrella Excess Liability insurance limits and (b) the amount under the subcontractor's contract with the Construction Manager when determining the subcontractor's Umbrella Excess Liability insurance limits.

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§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located.~~ State of Nebraska. The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

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The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the ~~jurisdiction where the Project is located,~~ State of Nebraska, subject to the requirements of AIA A201 Article 11, as follows:

...

Payment Bond	<u>100% of the Guaranteed Maximum Price</u>
Performance Bond	<u>100% of the Guaranteed Maximum Price</u>

The form of Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

...

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

OWNER (Signature)

Dr. Jeryl Nelson, President Board of Education
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Keith Moje, President
(Printed name and title)



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 day of February in the year 2021 (Effective Date)
(In words, indicate day, month, and year.)

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

Wayne County School District 90-0017, a/k/a Wayne Community Schools
A Nebraska political subdivision
611 W. 7th Street
Wayne, NE 68787

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

OCC Builders, LLC, a/k/a Otte Construction
A Nebraska limited liability company
521 Centennial Road
Wayne, NE 68787

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

Wayne Community Schools – High School Restroom Renovation Project, generally consisting of demolition and renovation work on both the first and second floors of the existing high school facility located at 611 W. 7th Street, Wayne, Nebraska, more particularly described on the Project Statement, attached as Appendix A.

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

Carlson West Povondra Architects, Inc.
A Nebraska corporation
5060 Dodge Street
Omaha, NE 68132

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

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

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

See Project Statement, attached as Appendix A

§ 1.1.2 The Project's physical characteristics:

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

See Project Statement, attached as Appendix A

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

See Project Statement, attached as Appendix A

Init.

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User Notes:

(1500338290)

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

- .1 Design phase milestone dates, if any:
See Project Statement, attached as Appendix A
- .2 Construction commencement date:
See Project Statement, attached as Appendix A
- .3 Substantial Completion date or dates:
See Project Statement, attached as Appendix A
- .4 Other milestone dates:
See Project Statement, attached as Appendix A

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

None

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

None

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

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

See Project Statement, attached as Appendix A

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

Mark Lenihan, Superintendent of Schools
Wayne Community Schools
611 W. 7th Street
Wayne, NE 68787
402-375-3150
malenih1@waynebluedevils.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.)

Jordan Widner, Director of Maintenance
Wayne Community Schools

Init.

611 W. 7th Street
Wayne, NE 68787
402-375-3150

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

.1 Geotechnical Engineer:

To be determined (if necessary or required)

.2 Civil Engineer:

To be determined (if necessary or required)

.3 Other, if any:

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

None

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

Bob Soukup, AIA and Principal
Carlson West Povondra Architects, Inc.
5060 Dodge Street
Omaha, NE 68132
402-551-1500
bsoukup@cwpaarchitects.com

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

Zach Moje, Project Manager
OCC Builders, LLC
521 Centennial Roac
Wayne, NE 68787
402-375-2180

§ 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.)

None

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

None

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

Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of the Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof.

Init.

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

§ 2.4 **Term of Agreement:** The term of this Agreement between the Owner and the Construction Manager shall be for a period commencing on the Effective Date and shall continue through the occurrence of one of the following events, whichever occurs first in time:

- .1 The completion of all services provided by the Construction Manager for the Project under the terms of this Agreement, with the term of this Agreement to extend twelve (12) months after the issuance by the Architect of the Certificate of Substantial Completion for the Project.
- .2 The termination of this Agreement according to its terms.

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

None

Init.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When the Construction Documents are approximately seventy percent (70%) completed, unless such date is extended by agreement of the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance or comments for modifications. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract upon which the Guaranteed Maximum Price is based;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems based on construction industry divisions of work or current CSI designations, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date, not less than thirty (30) days after receipt by the Owner of the Construction Manager's Guaranteed Maximum Price proposal, by which the Owner must either accept the Guaranteed Maximum Price or return the Construction Manager's proposal for modification or further refinement.

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

§ 3.2.4.1 The Construction Manager shall provide the Owner and Architect with a report on the status of the construction contingency on a monthly basis throughout the duration of the Project after the Guaranteed Maximum Price has been established.

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

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

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment, identified as Exhibit A, amending this Agreement, a copy of which the Owner shall provide to the Architect.

The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

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

§ 3.3.1.3 On-Site Staffing

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

§ 3.3.1.3.1 Project Manager

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

§ 3.3.1.3.2 On-Site Superintendent(s)

The Construction Manager shall have a site superintendent on the site of the Work at all times the Work is being performed. The Construction Manager's site superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the site superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The Construction Manager's site superintendent's services shall include: (1) review of all stages of the Work to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when

completed, will be in accordance with the Contract Documents; (2) shall be responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the Subcontractors are in compliance with the Contract Documents and all local, state and federal regulations; (3) shall make continuous on-site inspections to check quality or quantity of the Work; and, (5) shall keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201. The Owner acknowledges that the Construction Manager's schedule (including all critical path activities and all activities with float) is a working tool that the Construction Manager shall manage as its discretion dictates. The schedule adopted with the acceptance of Guaranteed Maximum Price Amendment is not a Contract Document; however, it does not alter the Construction Manager's obligation to substantially complete the Work by the specified date of Substantial Completion and Final Completion. The Construction Manager may revise the schedule throughout the Project as it deems necessary, and as agreed to by the Owner, so long as it does not defer the specified date of Substantial Completion and Final Completion. As part of its responsibility for the means and methods of construction, the Construction Manager shall have exclusive authority to determine the sequencing and duration of all direct construction schedule activities. As such, the Construction Manager shall have the exclusive use of any float in the schedule, given that float is clearly defined, and all critical path activities and durations are agreed upon by the owner. The Construction Manager shall ensure a schedule is available to all Subcontractors and track progress on a daily basis.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. 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, as determined by the Owner, to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Construction Manager shall notify the Owner and Architect promptly if any actual or perceived inconsistent, incorrect, or inaccurate information is discovered by the Construction Manager or any Subcontractors.

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

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.)

§ 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.)

Hourly based on standard personnel hourly rates, not to exceed the total amount of \$3,000.00. The Construction Manager's Fee for Preconstruction Services shall be included in the GMP.
(Table deleted)

§ 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.

§ 5.2 Payments

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

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

§ 5.2.3 Certified amounts unpaid within the time specified in Section 5.2.2 shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

Twelve % 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.)

Four percent (4%) of the final Cost of the Work, payable as provided in Article 11 below.

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

None

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

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None

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

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

None

§ 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.)

None

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

With Owner's prior approval

§ 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.

§ 7.3 Subcontract Costs

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools.

Rental rates, rental periods, and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Rental rates, rental periods, and quantities of equipment shall be specified in a manner that maximizes economies of scale. For the avoidance of doubt, rental periods on a weekly basis or other short-term periods should be avoided; rental periods for longer periods of time are preferred.

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

§ 7.6.3 Unless agreed to be paid by the Owner, fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents or any governmental or quasi-governmental authority to pay.

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

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

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

§ 7.6.6 [omit]

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§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 [omit]

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

§ 7.7 Other Costs and Emergencies

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

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

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

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

§ 7.8 Related Party Transactions

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

§ 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;

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- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase; and
- .10 Costs for the Construction Manager's site superintendent vehicle, job site phones, fax, communication equipment and other office supplies.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, daily logs, site superintendent reports, books, job cost reports, correspondence, instructions, drawings, receipts,

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

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

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

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

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

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

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

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

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

§ 11.1.5.4 The Construction Manager's Fee to be paid with each Application for Payment shall be determined in proportion to the Cost of the Work completed. The Construction Manager's final Fee amount shall be based on the final Cost of the Work determined upon completion of the Project. Final payment of the Construction Manager's Fee shall be adjusted based on differences between the Cost of Work determined by the GMP and the final Cost of the Work upon completion of the Project.

§ 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

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Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

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

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

None

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

None

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for

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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.)

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

The amount equal to the three percent (3%) of the Contract Sum until the Contractor has submitted to the Owner written clearance from the Commissioner of the Department of Labor of the State of Nebraska certifying that all payments then due of contributions or interest which may have arisen under this Agreement have been made by the Contractor and any Subcontractors to the Unemployment Compensation Fund.

§ 11.1.9 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.

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

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

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

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2;
- .4 the Architect has certified the total Cost of the Work for the Project;
- .5 the Construction Manager has submitted an AIA Document G707 consent of surety, if any, to final payment;
- .6 the Construction Manager has submitted notarized Subcontractor lien releases, if applicable, using AIA Document G706A;
- .7 the Construction Manager has submitted receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement and subcontracts, to the extent and in such form as may be designated by the Owner;
- .8 the Construction Manager has submitted a Department of Labor Division of Employment Form No. 16, Certificate of Contribution Status, from the State of Nebraska Department of Labor certifying that the Construction Manager and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the last in time date of Substantial Completion;
- .9 the Construction Manager has submitted all warranties, and maintenance and instruction manuals; and
- .10 the Construction Manager has submitted record drawings and "as-built" drawings.

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

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

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

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

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

As provided in Section 11.1.3 above.

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

§ 11.3 Interest

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

(Insert rate of interest agreed upon, if any.)

Twelve % per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

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

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201
- Litigation in a court of competent jurisdiction located in Wayne County, Nebraska
- Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager'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.

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

(Paragraphs deleted)

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201, neither party to the Contract shall assign the Contract

as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement.

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

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

§ 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. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) 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 and Architect 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.

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(Paragraphs deleted)

[omit]

§ 14.5 Other provisions:

§ 14.5.1 The Agreement shall be governed by the laws of the State of Nebraska and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be Wayne County, Nebraska.

§ 14.5.2 Acts or Omissions of Construction Manager's Employees

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

§ 14.5.3 Use of Job Site and Security

§ 11.5.3.1 Job Site Security and Construction Fencing

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

§ 14.5.3.2 Vehicle Parking

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

§ 14.5.3.3 Theft Deterrence Program

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

§ 14.5.4 Equal Opportunity in Employment

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

sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status.

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

§ 14.5.5 Compliance with Law

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

§ 14.5.6 Criminal History Checks

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

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

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

§ 14.5.6.4 The Construction Manager shall establish a construction site security protocol which shall include providing all employees of the Construction Manager, contractors, Subcontractors, material suppliers and other Project related personnel with a "Project" badge or sticker containing a unique identifier number. This unique identifier number must be logged by the Construction Manager's Site Superintendent or Project Manager so as to associate each individual's name and company with the number on the badge. A copy of the log shall be kept at all times in the office of the Construction

Manager's Site Superintendent and must be submitted to the Owner at the end of each week. If wearing the Construction Manager-provided "Project" badge will interfere with the work being performed by that individual, the Construction Manager shall provide a sticker with the necessary information for identification for the affected individual, which shall include the unique number on the identification. This sticker may be affixed to the individual worker's hard hats. All means of identification other than what is provided by the Construction Manager must be approved by the Construction Manager's Site Superintendent or Project Manager prior to implementation by the Construction Manager. Identification must be visible at all times. Individuals failing to comply with the job-site security requirements may be required by the Construction Manager or the Owner to leave the job-site.

§ 14.5.7 Contributions under Nebraska Employment Security Law

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

§ 14.5.8 Verification of Immigration Status

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

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

§ 14.5.9 Nebraska Employee Classification Act

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

§ 14.5.10 Claims for Consequential Damages

The Owner hereby expressly reserves the right to claim consequential damages against the Construction Manager for claims, disputes or other matters in question arising out of or relating to the subject matter of this Agreement. For purposes of this Section, the term "consequential damages" shall mean those damages incurred by the Owner as a consequence of the negligent acts or omissions of the Construction Manager. Such damages incurred by the Owner include injuries to persons or damage to property or economic loss.

§ 14.5.11 Sovereign Immunity

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

§ 14.5.12 Force Majeure

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

§ 14.5.13 Independent Contractor

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

§ 14.5.14 Kickbacks

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

§ 14.5.15 Notice

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

§ 14.5.16 Severability

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

§ 14.5.17 No Waiver of Rights

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

§ 14.5.18 Warranty

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

accordance with all designs, drawings, specifications, and other services furnished by the Owner through the Architect for the Project.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

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

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

Project Statement, Appendix A
Job Site Security Requirements, Appendix B
Form Contractor Affidavit, Appendix C

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

OWNER *(Signature)*

Dr. Jeryl Nelson, President Board of Education
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Keith Moje, President
(Printed name and title)

Init.

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User Notes:

(1500338290)

Appendix A

PROJECT STATEMENT **Wayne High School Facility Project** **611 W. 7th Street, Wayne, Nebraska**

1. **Scope of Project:** The proposed project will involve the following:

A. **Project Description:** High School Restroom Renovation Project, generally consisting of demolition and renovation work on both the first and second floors of the existing high school facility. The goal of this project is to update the existing restrooms to match other recently renovated restrooms and locker rooms in the high school and middle school, and to repair and replace existing plumbing serving these spaces.

Work on the first floor will include demolition of approximately 900 square feet of existing restrooms, a photography dark room, and the teacher work room. Demolition will include removal of the existing concrete floor slab in its entirety in the old restrooms to aid in replacement of plumbing drains, demolition of interior stud and masonry walls, demolition of wood doors and hollow metal frames, as well as the demolition of all of the existing acoustic ceilings, light fixtures and mechanical grilles. The terrazzo floor in the corridor will remain. The Owner will handle the abatement of asbestos floor tile in the teacher work room under a separate contract prior to this renovation work. Once demolition is complete the new construction will include two new staff restrooms, a new public restroom, a mother's room, and the renovated teachers' lounge. The new restrooms will be constructed with new metal stud and gypsum board partitions with tile wainscot and tile flooring. This will also include new acoustic ceilings, lights, mechanical modifications to coordinate with the new room layouts, and adjustments to existing fire sprinkler systems. In addition, the ceilings are being removed to aid in the replacement of all of the overhead drain lines that will be changed out as part of the second-floor renovations. Work in the teacher lounge will generally include new floor finish, ceilings, lighting, HVAC adjustments, and a new countertop and sink. An existing drinking fountain in the corridor will be relocated adjacent to the Staff Men's toilet in the main corridor.

Work on the second floor will include demolition of approximately 530 square feet of existing restrooms, plumbing chase and a janitor closet. Demolition will include removal of the existing mosaic tile flooring, all existing plumbing fixtures and drain lines, toilet partitions and accessories, acoustic ceilings, lighting and HVAC distribution as required to accommodate the new restroom layout. The new restrooms will be constructed with new metal stud and gypsum board partitions with a tile wainscot. The restrooms will also include new tile flooring, acoustic ceilings, lighting, mechanical modifications to coordinate with the new room layouts, and adjustments to existing fire sprinkler systems.

B. **Preliminary Project Plans.** Preliminary plan layouts for the project are shown on Attachment A.

2. **Project Location:** The project is located at the Wayne high school at 611 W. 7th Street, Wayne, Nebraska.

Appendix A

3. **Project Budget:** The preliminary total project construction budget for all costs for the entire Project is approximately Four Hundred Thousand Dollars (\$400,000.00).

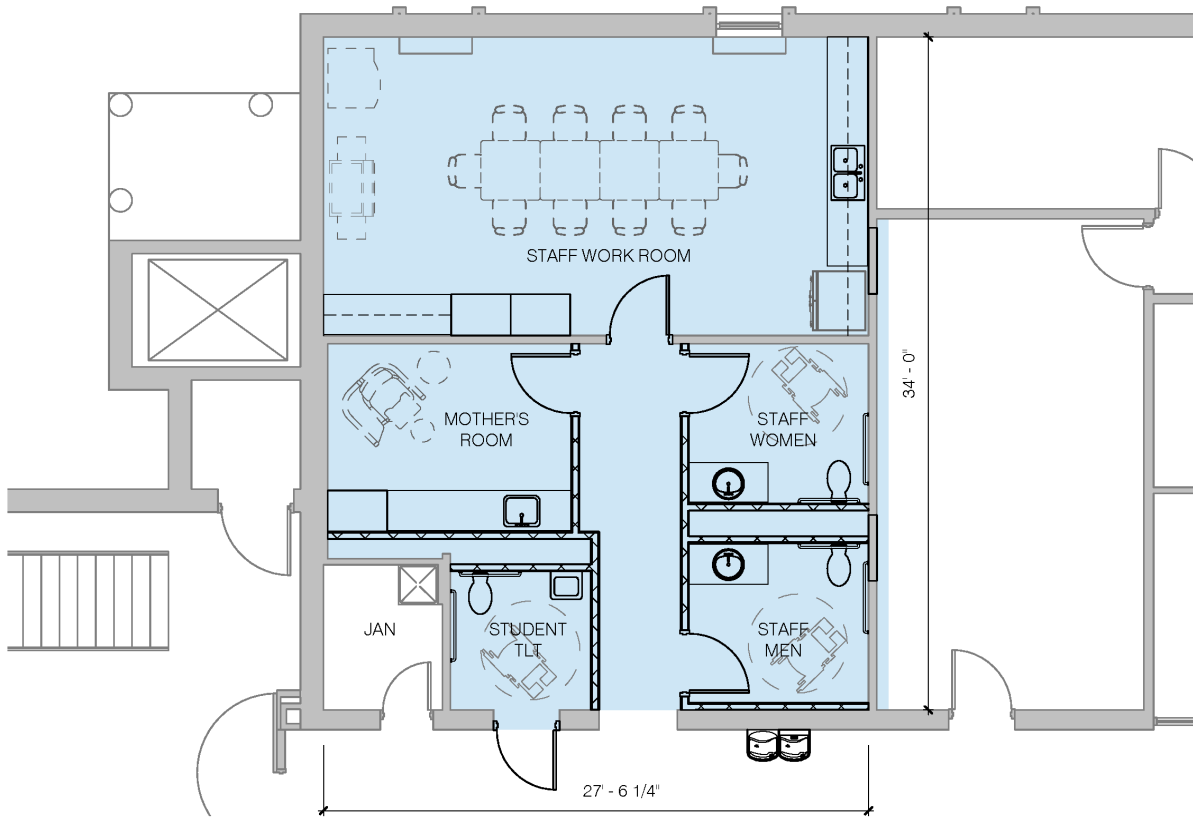
This project budget includes all costs and expenses for the Project, including but not limited to all labor and materials for construction (subcontracted and self-performed), construction manager fees and reimbursable expenses, general conditions/aid-to-construction costs, permits, and special testing. The construction budget does not include any site acquisition costs or architect/engineering fees and reimbursable expenses.

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

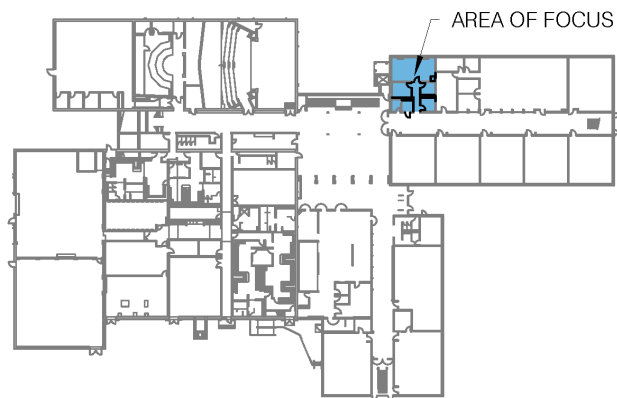
Contract execution:	February 15, 2021
CMR services begin:	February 15, 2021
70% Construction Documents:	Spring 2021
Guaranteed Maximum Price due:	Spring 2021
Construction begins:	Late May 2021
Substantial Completion:	August 1, 2021
Final Completion:	September 1, 2021

Appendix A

Attachment A-1



 **PARTIAL FIRST FLOOR PLAN**
1/8" = 1'-0"



 **KEYPLAN - FIRST FLOOR**
1" = 100'-0"

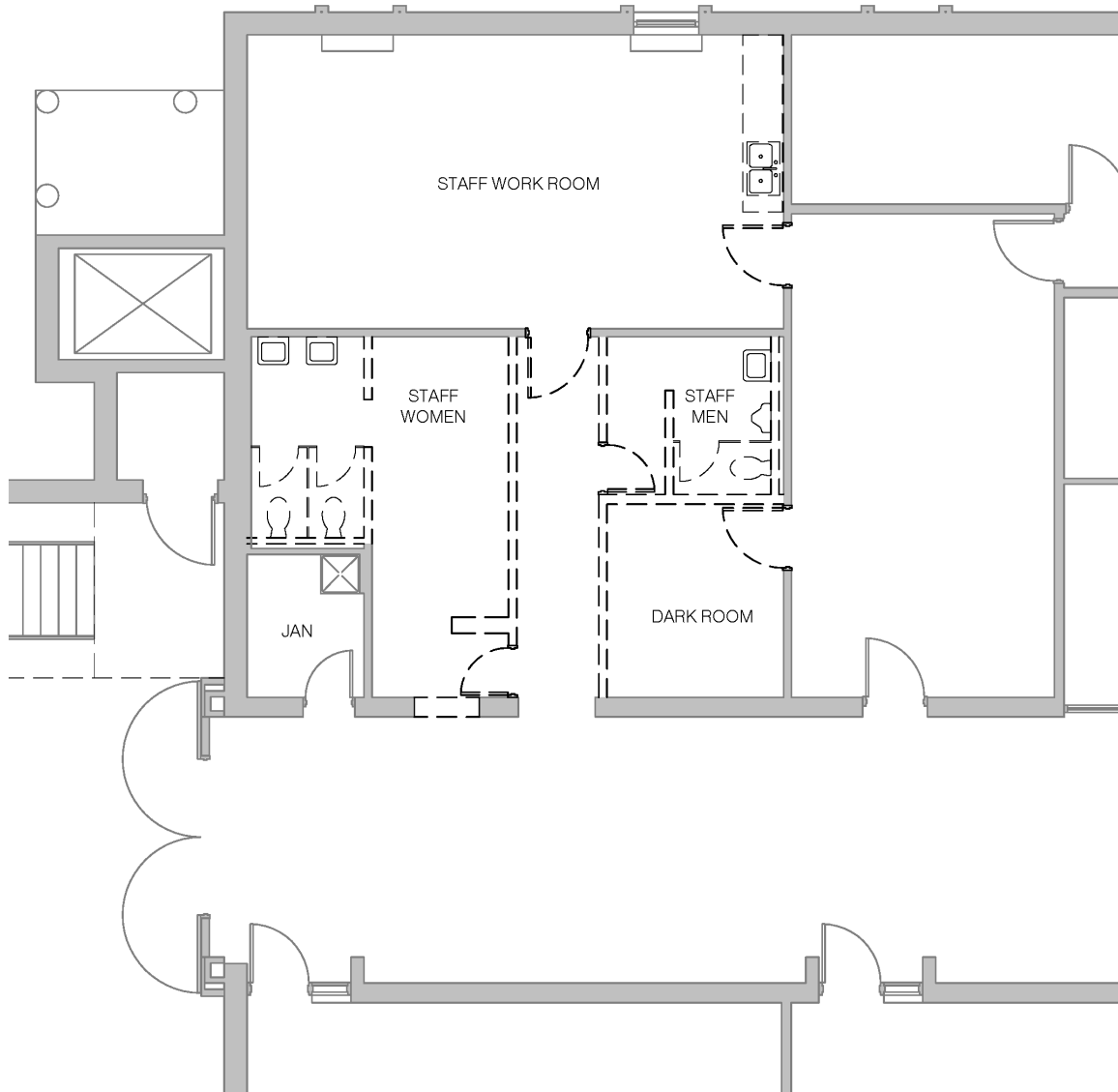


**CARLSON
WEST
POVONDRA**
ARCHITECTS

**FIRST FLOOR RENOVATION PLAN
HIGH SCHOOL RESTROOM RENOVATIONS**
WAYNE, NE
CWP 20156 12/11/2020

Appendix A

Attachment A-2



FIRST FLOOR DEMOLITION PLAN

1/8" = 1'-0"

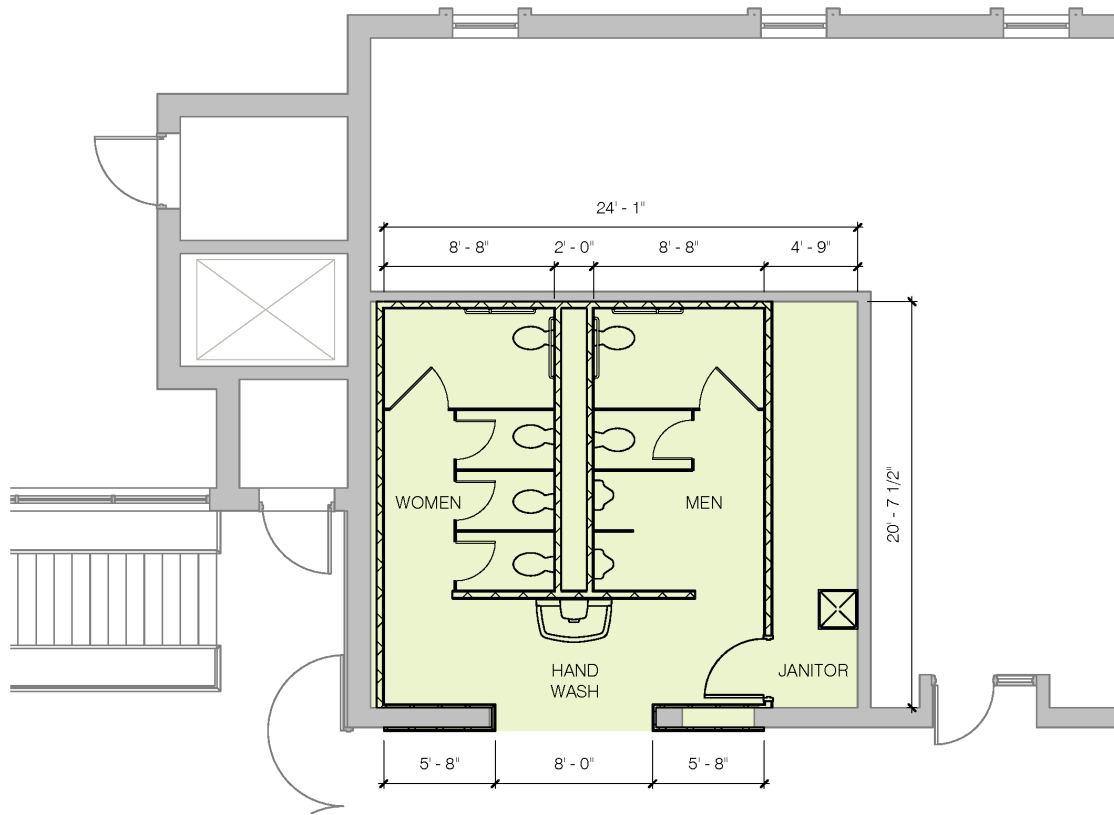


**CARLSON
WEST
POVONDRA**
ARCHITECTS

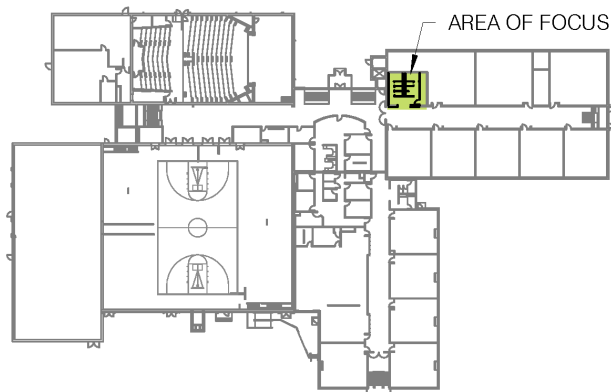
**FIRST FLOOR DEMOLITION
HIGH SCHOOL RESTROOM RENOVATIONS**
WAYNE, NE
CWP 20156 12/11/2020

Appendix A

Attachment A-3



 **PARTIAL SECOND FLOOR PLAN**
1/8" = 1'-0"



 **KEYPLAN - SECOND FLOOR**
1" = 100'-0"

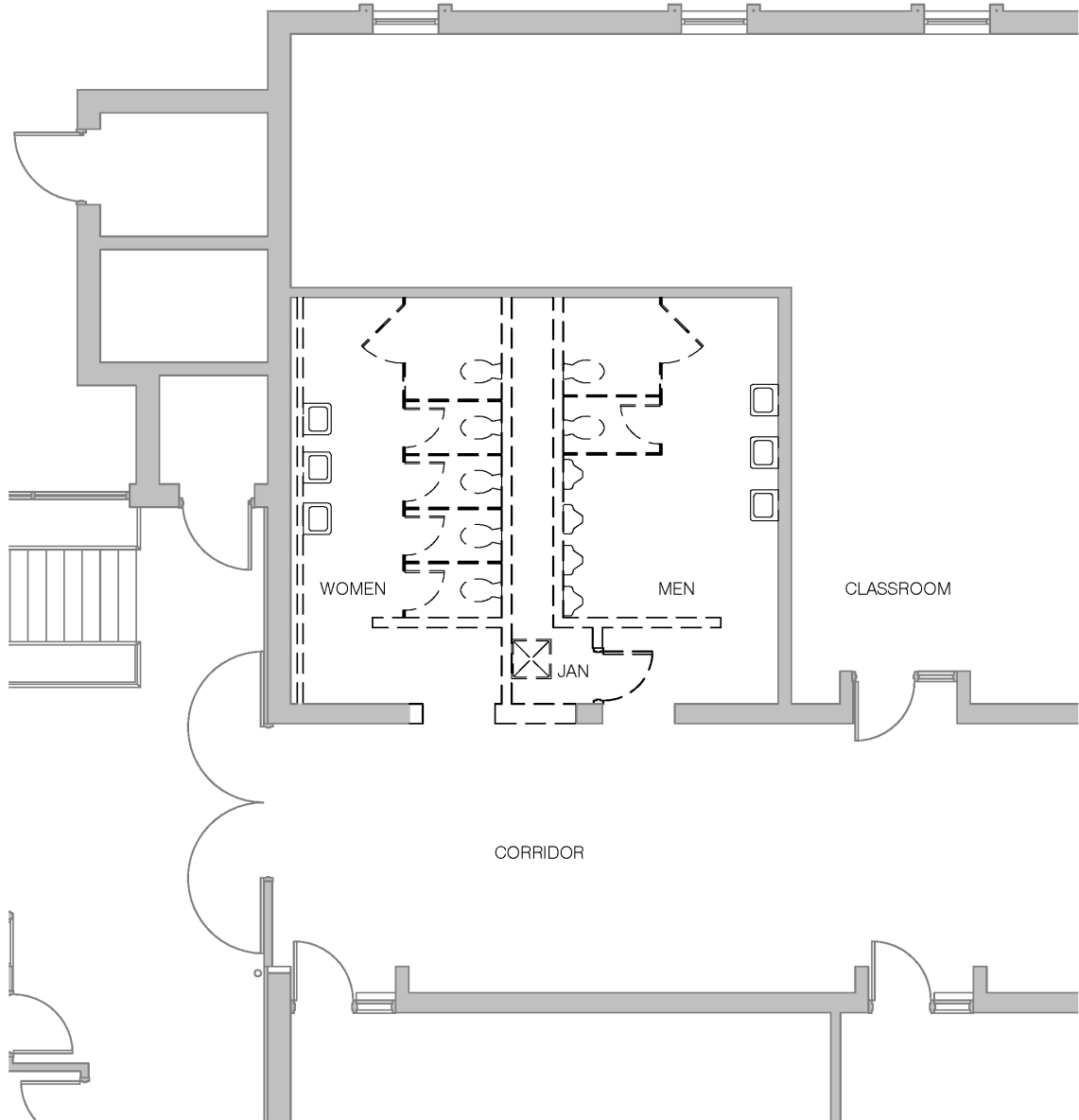


**CARLSON
WEST
POVONDRA**
ARCHITECTS

**SECOND FLOOR RENOVATION PLAN
HIGH SCHOOL RESTROOM RENOVATIONS**
WAYNE, NE
CWP 20156 12/11/2020

Appendix A

Attachment A-4



SECOND FLOOR DEMOLITION PLAN

1/8" = 1'-0"



**CARLSON
WEST
POVONDRA**
ARCHITECTS

**SECOND FLOOR DEMOLITION
HIGH SCHOOL RESTROOM RENOVATIONS**
WAYNE, NE
CWP 20156 12/11/20

Appendix B

WAYNE COMMUNITY SCHOOLS JOB SITE SECURITY REQUIREMENTS

1. Prior to performing any work or entering on the Project site, all contractors and subcontractors, and suppliers and materialmen shall sign a “Contractor/Supplier Criminal Records Certification,” a copy of which is attached hereto, certifying that such contractor shall not assign to work on the Wayne Community Schools building project an employee having a criminal record as defined by the School District’s policy, regulations, practices or directives and the general conditions of contract for the Project.

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

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

Appendix B

WAYNE COMMUNITY SCHOOLS CRIMINAL RECORDS DIRECTIVE

(a) Definitions

1. "Disqualifying criminal history" shall mean any conviction or other criminal history information designated by the Owner, or one of the following offenses, if at the time of the offense, the victim was under 19 years of age or enrolled in a public school: a felony offense under Nebraska Criminal Code Article 3 Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under the Nebraska Sex Offender Registration Act, Neb. Rev. Stat. §§ 29-4001 et seq.; or an equivalent offense under federal law or the laws of another state.

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

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

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

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

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

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

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

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

4. Upon receipt of the names of the questionnaire for each employee, the Contractor, Subcontractor or Supplier shall conduct a search on the Nebraska State Patrol - Sex-Offender Registry website, <http://www.nsp.state.ne.us/SOR/find.cfm>, to confirm such employee is not listed thereon.

5. In the event that the Contractor, Subcontractor or Supplier or School District determine that an employee as a record of crimes of a serious nature to immediately reassign and remove any individual or agent from the work site who is not in full compliance with the requirements of this paragraph.

Appendix B

**WAYNE COMMUNITY SCHOOLS
CONTRACTOR/SUBCONTRACTOR/SUPPLIER CRIMINAL RECORDS
CERTIFICATION**

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

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

Dated this ____ day of _____, 20__.

Name of Contract Vendor

By: _____
An Authorized Official

Appendix B

**WAYNE COMMUNITY SCHOOLS
CERTIFIED WORKER LIST**

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

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

Appendix C

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

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

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

FURTHER AFFIANT SAYETH NOT.

DATED this ____ day of _____, 20__.

Contractor

Signature Contractor/Authorized Official of Contractor

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

Additions and Deletions Report for **AIA[®] Document A133[™] – 2019**

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

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 11:36:33 ET on 02/10/2021.

PAGE 1

AGREEMENT made as of the day of February in the year 2021 (Effective Date)

...

Wayne County School District 90-0017, a/k/a Wayne Community Schools
A Nebraska political subdivision
611 W. 7th Street
Wayne, NE 68787

...

OCC Builders, LLC, a/k/a Otte Construction
A Nebraska limited liability company
521 Centennial Road
Wayne, NE 68787

...

Wayne Community Schools – High School Restroom Renovation Project, generally consisting of demolition and renovation work on both the first and second floors of the existing high school facility located at 611 W. 7th Street, Wayne, Nebraska, more particularly described on the Project Statement, attached as Appendix A.

...

Carlson West Povondra Architects, Inc.
A Nebraska corporation
5060 Dodge Street
Omaha, NE 68132

PAGE 2

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

PAGE 3

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

See Project Statement, attached as Appendix A

...

None

...

None

...

See Project Statement, attached as Appendix A

...

Mark Lenihan, Superintendent of Schools
Wayne Community Schools
611 W. 7th Street
Wayne, NE 68787
402-375-3150
malenih1@waynebluedevils.org

...

Jordan Widner, Director of Maintenance
Wayne Community Schools
611 W. 7th Street
Wayne, NE 68787
402-375-3150

PAGE 4

To be determined (if necessary or required)

...

To be determined (if necessary or required)

...

None

...

Bob Soukup, AIA and Principal
Carlson West Povondra Architects, Inc.

5060 Dodge Street
Omaha, NE 68132
402-551-1500
bsoukup@cwparcitects.com

...

Zach Moje, Project Manager
OCC Builders, LLC
521 Centennial Roac
Wayne, NE 68787
402-375-2180

...

None

...

None

...

Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of the Owner's Board of Education for the purpose of payment of the Contract Sum or any part thereof.

PAGE 5

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

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

§ 2.4 Term of Agreement: The term of this Agreement between the Owner and the Construction Manager shall be for a period commencing on the Effective Date and shall continue through the occurrence of one of the following events, whichever occurs first in time:

- .1 The completion of all services provided by the Construction Manager for the Project under the terms of this Agreement, with the term of this Agreement to extend twelve (12) months after the issuance by the Architect of the Certificate of Substantial Completion for the Project.
- .2 The termination of this Agreement according to its terms.

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

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of ~~A201-2017 A201~~ referenced in Section 2.3.1. The Construction Manager's Construction

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

PAGE 6

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

...

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

...

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

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

PAGE 7

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

...

None

PAGE 8

~~§ 3.2.1 At a time to be mutually agreed upon by~~ When the Construction Documents are approximately seventy percent (70%) completed, unless such date is extended by agreement of the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. ~~acceptance or comments for modifications.~~ The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

...

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

...

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

...

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

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

§ 3.2.4.1 The Construction Manager shall provide the Owner and Architect with a report on the status of the construction contingency on a monthly basis throughout the duration of the Project after the Guaranteed Maximum Price has been established.

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

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

...

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment;~~Amendment, identified as Exhibit A,~~ amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.6.1 In the event that the Owner and Construction Manager are not able to reach agreement upon a Guaranteed Maximum Price by the date specified in the Guaranteed Maximum Price proposal, Owner may terminate this Agreement in accordance with the provisions herein or, at Owner's sole discretion to do so, work with the

Construction Manager to make value engineering and/or schedule changes in order to achieve a mutually agreed upon Guaranteed Maximum Price.

PAGE 9

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

...

§ 3.3.1.3 On-Site Staffing

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

§ 3.3.1.3.1 Project Manager

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

§ 3.3.1.3.2 On-Site Superintendent(s)

The Construction Manager shall have a site superintendent on the site of the Work at all times the Work is being performed. The Construction Manager's site superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the site superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The Construction Manager's site superintendent's services shall include: (1) review of all stages of the Work to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents; (2) shall be responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the Subcontractors are in compliance with the Contract Documents and all local, state and federal regulations; (3) shall make continuous on-site inspections to check quality or quantity of the Work; and, (5) shall keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

PAGE 10

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of ~~A201–2017~~, A201. The Owner acknowledges that the Construction Manager's schedule (including all critical path activities and all activities with float) is a working tool that the Construction Manager shall manage as its discretion dictates. The schedule adopted with the acceptance of Guaranteed Maximum Price Amendment is not a Contract Document; however, it does not alter the Construction Manager's obligation to substantially complete the Work by the specified date of Substantial Completion and Final Completion. The Construction Manager may revise the schedule throughout the Project as it deems necessary, and as agreed to by the Owner, so long as it does not defer the specified date of Substantial Completion and Final Completion. As part of its responsibility for the means and methods of construction, the Construction Manager shall have exclusive authority to determine the sequencing and duration of all direct construction schedule activities. As such, the Construction Manager shall have the exclusive use of any float in the schedule, given that float is clearly defined, and all critical

path activities and durations are agreed upon by the owner. The Construction Manager shall ensure a schedule is available to all Subcontractors and track progress on a daily basis.

...

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

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-relevant, as determined by the Owner,~~ to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Construction Manager shall notify the Owner and Architect promptly if any actual or perceived inconsistent, incorrect, or inaccurate information is discovered by the Construction Manager or any Subcontractors.

...

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

...

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

PAGE 12

Hourly based on standard personnel hourly rates, not to exceed the total amount of \$3,000.00. The Construction Manager's Fee for Preconstruction Services shall be included in the GMP.

Individual or Position

Rate

...

§ 5.2.2 ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after review and action on the Application for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554. Notwithstanding the requirements of this section, to allow sufficient time for review and action on Applications for Payment by the Owner's Board of Education at a regular meeting held pursuant to Neb. Rev. Stat. § 79-554, the "receipt by the owner or the owner's~~

representative of a payment request made pursuant to the contract" under Neb. Rev. Stat. § 45-1203 shall be deemed to occur at the regular meeting of the Owner's Board of Education immediately following the receipt of the Application for Payment by the Architect.

§ 5.2.3 Certified amounts unpaid within the time specified in Section 5.2.2 shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Twelve % per annum

...

Four percent (4%) of the final Cost of the Work, payable as provided in Article 11 below.

...

None
PAGE 13

None

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

...

None

...

None

...

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

...

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

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

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

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017-A201 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

PAGE 14

With Owner's prior approval

...

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. ~~Rates~~ Rental rates, rental periods, and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Rental rates, rental periods, and quantities of equipment shall be specified in a manner that maximizes economies of scale. For the avoidance of doubt, rental periods on a weekly basis or other short-term periods should be avoided; rental periods for longer periods of time are preferred.

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

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

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

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

§ 7.6.2.1 The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, PROVIDED that the Construction Manager and Subcontractors fulfill the requirements of Neb. Rev. Stat. § 77-2704.15. For the purpose of establishing exemption, it is understood and agreed that the Construction Manager may be required to segregate materials and labor costs at the time a Subcontract for the Work is awarded. The Construction Manager will accept Purchase Agent Appointment and Exempt Sales Certificate forms from the Owner. The Construction Manager shall obtain Resale Certificates from the Construction Managers and/or Subcontractor's suppliers. Failure of the Construction Manager or any Subcontractor to obtain Resale Certificates from suppliers shall make the Construction Manager or Subcontractor responsible for absorbing the tax, without compensation from the Owner. The Construction Manager shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. THE CONSTRUCTION MANAGER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS THE

OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF THE CONSTRUCTION MANAGER OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH TAX LAWS AND REGULATIONS.

§ 7.6.3 Fees ~~Unless agreed to be paid by the Owner, fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents or any governmental or quasi-governmental authority to pay.~~

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

...

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

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

PAGE 16

§ 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.~~ [omit]

...

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

...

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

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- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .9 Costs for services incurred during the Preconstruction ~~Phase.~~ ~~Phase;~~ ~~and~~
- .10 Costs for the Construction Manager's site superintendent vehicle, job site phones, fax, communication equipment and other office supplies.

...

§ 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.~~ ~~bids or proposals.~~ The Construction Manager shall obtain bids or proposals from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The

Construction Manager shall deliver such bids or proposals to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

...

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

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

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

...

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

...

§ 11.1.5.3 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.

§ 11.1.5.4 The Construction Manager's Fee to be paid with each Application for Payment shall be determined in proportion to the Cost of the Work completed. The Construction Manager's final Fee amount shall be based on the final Cost of the Work determined upon completion of the Project. Final payment of the Construction Manager's Fee shall be adjusted based on differences between the Cost of Work determined by the GMP and the final Cost of the Work upon completion of the Project.

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

...

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

...

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

...

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

...

None

...

None

PAGE 20

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

The amount equal to the three percent (3%) of the Contract Sum until the Contractor has submitted to the Owner written clearance from the Commissioner of the Department of Labor of the State of Nebraska certifying that all payments then due of contributions or interest which may have arisen under this Agreement have been made by the Contractor and any Subcontractors to the Unemployment Compensation Fund.

§ 11.1.9 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-A201.

...

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

- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.11.2.2.2;
- .4 the Architect has certified the total Cost of the Work for the Project;
- .5 the Construction Manager has submitted an AIA Document G707 consent of surety, if any, to final payment;
- .6 the Construction Manager has submitted notarized Subcontractor lien releases, if applicable, using AIA Document G706A;
- .7 the Construction Manager has submitted receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement and subcontracts, to the extent and in such form as may be designated by the Owner;
- .8 the Construction Manager has submitted a Department of Labor Division of Employment Form No. 16, Certificate of Contribution Status, from the State of Nebraska Department of Labor certifying that the Construction Manager and each of its Subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding the last in time date of Substantial Completion;
- .9 the Construction Manager has submitted all warranties, and maintenance and instruction manuals; and
- .10 the Construction Manager has submitted record drawings and "as-built" drawings.

PAGE 21

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

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document ~~A201–2017-~~A201. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

...

As provided in Section 11.1.3 above.

...

Twelve % per annum

...

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

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

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

...

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

[**X**] Litigation in a court of competent jurisdiction located in Wayne County, Nebraska

...

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

PAGE 23

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

...

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

...

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

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

...

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

...

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of ~~A201-2017~~A201, neither party to the Contract

shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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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 written on an occurrence basis with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

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

§ 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 insurance.~~ In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) in the aggregate.

...

§ 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 and Architect 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.

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§ 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.)

[omit]

...

§ 14.5.1 The Agreement shall be governed by the laws of the State of Nebraska and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be Wayne County, Nebraska.

§ 14.5.2 Acts or Omissions of Construction Manager's Employees

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

§ 14.5.3 Use of Job Site and Security

§ 11.5.3.1 Job Site Security and Construction Fencing

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

§ 14.5.3.2 Vehicle Parking

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

§ 14.5.3.3 Theft Deterrence Program

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

§ 14.5.4 Equal Opportunity in Employment

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

§ 14.5.4.2 The Construction Manager hereby warrants and represents that it is in compliance with said Act. Any failure to so comply during the performance of this Agreement shall be a material breach of the Agreement. The Construction Manager by execution of this agreement certifies that the Construction Manager is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants as well as historically underutilized

business Subcontractors, and does not discriminate against any employee or applicant for employment or Subcontractor by reason of sex, disability, race, color, religion, veteran status, national or ethnic origin, age, marital status, pregnancy, childbirth or related medical condition, or other protected status. By execution of this agreement, the Construction Manager agrees to actively continue and implement this policy throughout any awarded project.

§ 14.5.5 Compliance with Law

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

§ 14.5.6 Criminal History Checks

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

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

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

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

approved by the Construction Manager's Site Superintendent or Project Manager prior to implementation by the Construction Manager. Identification must be visible at all times. Individuals failing to comply with the job-site security requirements may be required by the Construction Manager or the Owner to leave the job-site.

§ 14.5.7 Contributions under Nebraska Employment Security Law

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

§ 14.5.8 Verification of Immigration Status

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

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

§ 14.5.9 Nebraska Employee Classification Act

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

§ 14.5.10 Claims for Consequential Damages

The Owner hereby expressly reserves the right to claim consequential damages against the Construction Manager for claims, disputes or other matters in question arising out of or relating to the subject matter of this Agreement. For purposes of this Section, the term "consequential damages" shall mean those damages incurred by the Owner as a consequence of the negligent acts or omissions of the Construction Manager. Such damages incurred by the Owner include injuries to persons or damage to property or economic loss.

§ 14.5.11 Sovereign Immunity

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

§ 14.5.12 Force Majeure

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

§ 14.5.13 Independent Contractor

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

§ 14.5.14 Kickbacks

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

§ 14.5.15 Notice

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

§ 14.5.16 Severability

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

§ 14.5.17 No Waiver of Rights

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

§ 14.5.18 Warranty

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

PAGE 29

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

...

Project Statement, Appendix A
Job Site Security Requirements, Appendix B
Form Contractor Affidavit, Appendix C

...

Dr. Jeryl Nelson, President Board of Education

Keith Moje, President





Educational Service Unit #1

"Providing Innovation, Leadership and Service"

211 Tenth Street • Wakefield, NE 68784-5014
402.287.2061 • Fax 402.287.2065
www.esu1.org

Dr. Bill Heimann, Administrator

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2021-22 SERVICE CONTRACT

This Agreement is made and entered into by and between District No. 17, a/k/a Wayne Public Schools ("School District") and Educational Service Unit #1 ("ESU #1").

For good and valuable consideration, School District and ESU #1 agree as follows:

- 1. Term of Agreement.** The term of this Contract shall commence August 1, 2021 and end July 31, 2022. In the event of a material breach of this Contract by either of the parties, the non-breaching party may give a notice of the breach to the other party and, in the event the breach is not cured within twenty days of the notice, immediately cancel or rescind this Contract.
- 2. Services.** ESU #1 shall deliver the services described in the attached Exhibit "A" to School District. The services shall be provided in compliance with applicable legal requirements. ESU #1 reserves the right to assign such personnel to deliver the contracted services as it determines appropriate and reserves the right, in its sole discretion, to make all personnel, administrative, and operational decisions with respect to ESU #1 operations and services which do not directly impair it from providing the contracted services pursuant to this Contract. It is agreed that in the event ESU #1 determines, in its discretion, that it is not able to reasonably provide a particular service(s) set forth in Exhibit "A," ESU #1 may give notice of such to School District and cease providing such service(s), in which event School District shall not be required to pay for such service(s) to the extent such are not delivered. Such event shall not affect the responsibilities of ESU #1 or School District related to providing and paying for the other services set forth in Exhibit "A."
- 3. Payment for Services.** ESU #1 shall, in good faith, determine its costs incurred or to be incurred in connection with the contracted services in accordance with internal cost accounting systems, methods and techniques deemed appropriate by ESU #1. The estimated costs set forth in the attached Exhibit "A" are estimates only and shall not serve as a limit to the amount due to ESU #1. Upon determination of such costs, ESU #1 shall submit to School District a quarterly statement setting forth the amount due to ESU #1 from School District in accordance with this Contract. Such amount shall be due and payable upon receipt by School District. Additional statements for supplemental services may be incurred.
- 4. Indemnification.** School District hereby agrees to indemnify, defend, and hold ESU #1 harmless from any and all costs and liabilities arising from performance under this Contract, including but not limited to damages and other monetary remedies, and attorney fees and costs incurred, except for intentional wrongdoing or negligence by ESU #1 or its employees or agents. The foregoing indemnification obligation shall continue notwithstanding the expiration or termination of this Contract.
- 5. E-Verify.** ESU #1 shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- 6. Relationship.** It is agreed that the parties are independent contractors and that neither party or their employees or agents shall be deemed by virtue of this Contract to be employees of the other party.
- 7. Authority.** The terms of this Contract set forth the entire agreement of the parties with respect to the subject matter of this Contract; there are no other agreements, written or oral, except those which are set forth or specifically referenced in this Contract. This Contract may be amended only by a duly approved written amendment or addendum. This Contract shall be governed by and construed in accordance with the laws of the State of Nebraska and be binding upon the parties hereto and their successors. Each party acknowledges and represents that the persons executing this Contract have full, unconditional authority to execute the Contract on the behalf of the entity for which they are signing.

Educational Service Unit #1 By: <i>Bill Heimann</i> Administrator Dated: February 3, 2021	Wayne Public Schools Signature _____ Print Name _____ Title: _____ Dated: _____
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EXHIBIT "A"
2021-22

SCHOOL Wayne Public Schools

DATE February 3, 2021

Services	Rate	F.T.E.	Hours	Total
Vision/O&M Teacher	126.00		30.00	3,780.00
SPED Consultant	114,500.00			0.00
Speech Therapy	101,000.00	0.03		3,030.00
Speech Para	70,250.00			0.00
Deaf Educator	119.00		2.00	238.00
Audiologist	124.00		60.00	7,440.00
Psychologist	101,250.00	1.40		141,750.00
Physical Therapy	126.50		5.00	632.50
Occupational Therapy	126.50		20.00	2,530.00
Transition	115,000.00	0.05		5,750.00
Nursing Services	96,000.00			0.00
Mental Health	87,000.00			0.00
Tower Outreach	92,500.00	0.04		3,700.00
In-service	50.00		10	500.00
Program Supervision (8%)				13,548.04
PSP/ Early Intervention	123.00		325.00	39,975.00
ECSE Centerbase				
Subtotal				222,873.54
Tower School	36,500.00	10.00		365,000.00
Nonreimbursable	3,200.00			32,000.00
Subtotal				397,000.00
Other Services:				

TOTAL CONTRACT **\$619,873.54**

AGREEMENT FOR PHYSICAL AND/OR OCCUPATIONAL THERAPY SERVICES

This Agreement is by and between Wayne Community Schools, located at 611 West 7th Street, Wayne, Nebraska (hereinafter referred to as "SCHOOL"), hereinafter referred to as "SCHOOL" and Providence Medical PMC, 1200 Providence Road, Wayne, Nebraska 68787 a Nebraska nonprofit corporation, hereinafter referred to as "PMC".

I. RECITALS

WHEREAS, SCHOOL desires to have the services of a qualified physical therapist, physical therapist assistant, occupational therapist or certified occupational therapist assistant available to students of SCHOOL, including services to those students enrolled in kindergarten through twelfth grade, as applicable/requested,

WHEREAS, PMC has a qualified physical therapist, physical therapist assistant, occupational therapist or certified occupational therapist assistant,

WHEREAS, PMC desires to make the services of a qualified physical therapist, physical therapist assistant, occupational therapist or certified occupational therapist assistant available to students of SCHOOL,

For a good and valuable consideration, the Parties agree to the following:

II. RESPONSIBILITIES OF PMC

- A. PMC shall provide the services of a physical therapist, physical therapist assistant, occupational therapist or certified occupational therapist assistant to SCHOOL.
- B. Therapists of PMC shall provide an Educational evaluation and services to students referred for physical or occupational therapy. PMC therapists shall provide appropriate services to SCHOOL students enrolled in kindergarten through twelfth grade (including 18-21 program).
- C. With input from SCHOOL staff and parents, the therapists of PMC shall develop the physical and/or occupational therapy plans that support goals developed by the IEP team.
- D. Therapists of PMC shall provide a regular record, including documentation in hard copy or electronic form, and periodic assessment of the student's progress. Therapists may use photography, with the written consent of participating student's parent/guardian, in order to enhance objective documentation and execution/implementation of the IEP plan by SCHOOL staff.
- E. Therapists of PMC shall participate in the interdisciplinary monitoring of individual education plans.
- F. Upon request, PMC shall provide SCHOOL with evidence of therapists' compliance with OSHA requirements regarding Bloodborne Pathogens and other applicable Standards/regulatory requirements.
- G. PMC shall provide SCHOOL with therapists' current licenses and/or relevant certifications to practice Physical and/or Occupational Therapy in the state of Nebraska.

- H. Therapists of PMC shall comply with policies and procedures established by SCHOOL to the extent that they do not violate local, state, federal law, ethical standards, licensure scope of practice or parameters set for PMC employees.
- I. Physical and/or Occupational Therapy services will be provided without regard to race, color, creed, religion, gender, gender identity/orientation, age, handicapping or disability condition, or other factors unrelated to the student's need for services,
- J. Therapists shall ensure that they establish and maintain positive and effective professional working relationships with SCHOOL personnel and with students and their family members.
- K. PMC shall ensure that therapist, along with IEP team members, determine when, how, where, and whether to render services to individual students based on their IEP goals.
- L. Denial of Payment by Reimbursement Sources. SCHOOL shall be required to compensate PMC for each service rendered to a SCHOOL student.

III. RESPONSIBILITIES OF SCHOOL

- A. SCHOOL shall provide orientation to therapists as necessary for the performance of duties.
- B. SCHOOL shall provide adequate space, equipment, supplies (assessments and therapy materials), and support staff for the therapists' duties.
- C. SCHOOL shall provide therapists of PMC with complete access to all records of such students which are maintained by the SCHOOL and which are necessary and appropriate for the performance of the duties of the therapists of PMC under this Agreement.

IV. COMPENSATION

Within fourteen (14) days after the end of each month, PMC shall provide to SCHOOL satisfactory documentation of expenses relevant to the Physical and/or Occupational Therapy Services for the previous month. Payment for services is due within thirty (30) days of receipt of PMC invoice. The compensation rates are delineated in Exhibit 1 appended to this contract. PMC reserves the right to modify rates so long as written notification of such changes is provided to SCHOOL in a timeframe consistent with and corresponding to those delineated in Article VI. of this Agreement.

V. RELATIONSHIP

The Parties to this Agreement are independent contractors to one another and nothing in this Agreement shall be deemed to create a relationship of principal and agent between the Parties. Additionally, nothing in this Agreement shall be construed to create an employer/employee, master/servant or partnership/joint venture relationship between the Parties. Each party shall be exclusively responsible for selecting, supervising and compensating its own employees and/or representatives in the performance of their responsibilities under this Agreement. No party shall have the authority to bind the others or to transact business in the name of the others nor to make representations or promises on behalf of the other Party, except as it is expressly granted under this Agreement or in writing by the other party. PMC shall be solely responsible for withholding, reporting, and

paying any Social Security, income or other taxes due on account of payments under this Agreement.

VI. TERM AND TERMINATION

A. The term of this Agreement shall be for an initial term commencing on August 1st, 2021 and extending for one (1) year thereafter and shall automatically renew for successive one (1) year terms thereafter unless either party provides written notice of term or termination to the other no later than February 1st prior to the end of the year of the initial term (2022) or prior to the end of any subsequent renewal term to reasonably facilitate replacement of the service (see Article VI. A. 1. below).

Notwithstanding the stated term, this Agreement may be terminated sooner as outlined in Article VI.A. 2-9 below:

1. Without Cause. Without cause or penalty by either party with written notification to the other party provided no later than February 1st prior to the end of the term of the agreement.
2. For Cause. For cause by either party upon giving the other party not less than thirty (30) days' prior notice of termination in writing specifying the alleged breach or default and the date on which termination will be effective; provided, that in the event of termination for cause under this subparagraph, the party receiving notice shall have the notice period in which to correct or cure the alleged breach or default to the reasonable satisfaction of the party giving notice. Cause under this subparagraph consists of a material breach or default by the party receiving notice in the performance or under the terms and conditions of this Agreement.
3. Failure to Meet Qualifications. By SCHOOL immediately upon written notice to PMC if therapist fails or ceases to meet the required qualifications.
4. Failure to Provide Facilities and Support. By PMC immediately upon written notice to SCHOOL if SCHOOL fails or ceases to provide the facilities, equipment and/or support needed to adequately provide services.
5. Disapproval of Assigned Therapist. By SCHOOL immediately upon written notice of the replacement of a regularly assigned therapist for any reason (i.e., death, disability of therapist, or termination of therapist's employment by PMC); that would result in assignment of a therapist that was not amenable to SCHOOL, provided, however, the Agreement may be continued if SCHOOL and PMC can agree on a qualified replacement therapist.
6. Mutual Agreement. At any time upon mutual written Agreement of the Parties.
7. Application of Law. By either party at any time, in the event that any court or governmental authority determines that either party is, under this Agreement, operating in violation of any law, regulation or court ruling. In the event the Agreement is subject to termination under this section due to the occurrence of one of the events described herein, the Parties agree to use their best efforts to promptly negotiate any reasonable changes to the Agreement, without substantially destroying the underlying structure and purpose of the Agreement, in order to remedy such prohibitions, and a party can exercise its option to terminate only if the Parties do not or cannot promptly take such steps as are necessary to remedy such violation.

8. Bankruptcy of SCHOOL. Immediately upon the bankruptcy, receivership, or dissolution of SCHOOL, or the cessation of SCHOOL's business.
 9. Bankruptcy of PMC. Immediately upon the bankruptcy, receivership, or dissolution of PMC, or the cessation of PMC's business.
- B. Effect of Termination. PMC therapist's authority to use the facilities, equipment, personnel, services, and supplies provided by SCHOOL is derived entirely from this Agreement. Upon termination of this Agreement, therapists shall immediately vacate SCHOOL facilities and cease using and return the equipment, personnel, services and supplies and other property of SCHOOL furnished to therapists under this Agreement. Therapists shall not thereafter attempt to provide the services described in this Agreement or utilize the facilities, equipment, personnel, services and supplies of SCHOOL furnished to therapists because of this Agreement without the express written permission from SCHOOL. The termination of this Agreement shall not relieve Parties of their obligations incurred prior to or as a result of such termination.

VII. NOTIFICATIONS Notices.

All notices, demands, requests, consents, or other communications required by this Agreement may be delivered personally or sent by first-class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to PMC:

CEO
 Providence Medical Center
 1200 Providence Rd
 Wayne, NE 68787-1212

If to SCHOOL:

SUPERINTENDENT
 611 West 7th Street
 Wayne, NE 68787

VIII. MISCELLANEOUS PROVISIONS

- A. Advertising. Neither party shall use the name of the other party in any promotional or advertising material unless review and written approval of the intended use shall first be obtained from the other.
- B. Access to Books and Records. The following clause is included because of the possible application of section 1861(v)(1)(I) of the Social Security Act to this Agreement; if that section should be found inapplicable to this Agreement, then this clause shall be deemed not to be part of this Agreement and shall be null and void:
 1. Until the expiration of four years after the furnishing of services under this Agreement, PMC shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and such books, documents, and records of PMC as are necessary to certify the nature and extent of the cost hereunder.
 2. If PMC carries out any of its duties under this Agreement through a subcontract, for the value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause placing the same duty on the sub-contractor as this contract places on Provider.

- C. Limitation of Liability. No party shall be liable under any contracts or obligations of the other and their respective owners, officers, employees, agents, and representatives, except as otherwise provided pursuant to this Agreement, or for any negligent or intentional act or omission of any other party or its officers, employees or agents.
- D. Indemnification. The Parties hereby agree to indemnify, defend, and hold harmless each other, their respective owners, officers, employees, agents and representatives from any and all claims, actions, suits, costs and liabilities, including reasonable attorneys' fees, arising from the acts or omissions of the indemnifying party, its owners, officers, employees, agents or representatives under this Agreement.
- E. Privacy and Security of Student Information. The Parties agree to abide by all state and federal laws and all policies and procedures adopted by SCHOOL to comply with such laws, governing the privacy, security and use of a student's protected health information.
- F. Amendments. This Agreement shall not be amended except upon the express written Agreement of the Parties.
- G. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the other provisions shall remain in full force and shall in no way be affected, impaired or invalidated, unless to do so would substantially destroy the fundamental purposes of this Agreement or substantially and unfairly alter the respective burdens and benefits of the Parties hereunder.
- H. Waiver. Any waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any other provision or any subsequent breach.
- I. Assignment. Neither this Agreement nor any of the duties or responsibilities of a party shall be assigned or transferred by a party without the other Parties' prior written consent.
- J. Binding Effect. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto, and their heirs, legal representatives, successors and permitted assigns.
- K. Governing Law. This Agreement shall be interpreted, construed and governed according to the laws of the State of Nebraska.
- L. Interpretation. This Agreement is the result of negotiation between the Parties, and no ambiguity herein shall be construed against either party because of that party's role in drafting this Agreement.
- M. Entire Agreement. This Agreement, together with any exhibits or schedules hereto, constitute the entire Agreement between the Parties as to the subject matter hereof, and replaces all prior written and oral statements and understandings. To the extent that any exhibit or schedule contains express provisions which are inconsistent with any term of this document, the express provisions of the schedule or exhibit shall control.
- N. Copies/Signatures. A fully executed facsimile or electronic copy of this Agreement shall be treated as an original Agreement and signatures may be made in counterparts to this Agreement.
- O. Recitals. The recitals are intended to describe the intent of the Parties and the circumstances under which this Agreement is executed and shall be considered in the interpretation of this Agreement.

- P. Headings. The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand express provisions of this Agreement.
- Q. No Third Party Beneficiaries. This Agreement is executed for the benefit of the named Parties only. Nothing in this Agreement or in the negotiation of this Agreement shall have the effect of conferring any rights or expectations on any third party. No one other than a party to this Agreement or a party's permitted successor or assign shall have the right to enforce any covenant, term or condition in this Agreement

IN WITNESS WHEREOF, the Parties have executed, in duplicate, this Agreement as of the later of the dates set forth below.

PROVIDENCE MEDICAL CENTER
("PMC")

WAYNE COMMUNITY SCHOOLS
("SCHOOL")

By: James R Frank
Its: CEO

By: _____
Its: _____

Date: 2/8/21

Date: _____

AGREEMENT FOR PHYSICAL AND/OR OCCUPATIONAL THERAPY SERVICES

EXHIBIT 1

As outlined in the contract at Article IV., within fourteen (14) days after the end of each month, PMC shall provide to SCHOOL satisfactory documentation of expenses relevant to the Physical and/or Occupational Therapy Services for the previous month. Payment for services is due within thirty (30) days of receipt of PMC invoice.

PMC reserves the right to modify rates so long as written notification of such changes is provided to SCHOOL in a timeframe consistent with and corresponding to those delineated in Article VI. of the Agreement.

Compensation Rates:

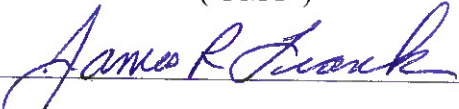
- \$75.00/hour for a licensed Physical and/or Occupational Therapist;
- \$50.00/hour for a licensed Physical and/or Occupational Assistant;
- Due to the proximity between PMC's Wayne location and SCHOOL, travel time and mileage to and from the schools will not be included in the hourly rate.
- Compensable services shall include direct therapy intervention, time spent on documentation, any staff or parental meetings/conferences relevant to the service. Documentation times will be closely monitored by PMC to ensure that current and appropriate timeframes established for other like services are not exceeded.

- P. Headings. The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand express provisions of this Agreement.
- Q. No Third Party Beneficiaries. This Agreement is executed for the benefit of the named Parties only. Nothing in this Agreement or in the negotiation of this Agreement shall have the effect of conferring any rights or expectations on any third party. No one other than a party to this Agreement or a party's permitted successor or assign shall have the right to enforce any covenant, term or condition in this Agreement

IN WITNESS WHEREOF, the Parties have executed, in duplicate, this Agreement as of the later of the dates set forth below.

PROVIDENCE MEDICAL CENTER
("PMC")

WAYNE COMMUNITY SCHOOLS
("SCHOOL")

By: 
Its: CEO

By: _____
Its: _____

Date: 2/11/21

Date: _____