

Fremont Board of Education
Board of Education Regular Meeting
Board Room
130 E 9th St
Main St Education & Administration Center
Fremont, NE 68025
Monday, July 11, 2022 6:30 PM

AGENDA SUMMARY

1. CALL TO ORDER AND ROLL CALL

INDIVIDUALS WISHING TO ADDRESS THE BOARD WILL BE RECOGNIZED TO SPEAK AT THE BOARD TABLE. WHEN RECOGNIZED BY THE CHAIR, PLEASE STATE YOUR NAME BEFORE PROCEEDING WITH YOUR COMMENTS. A MAXIMUM TIME LIMIT OF 5 MINUTES WILL BE ALLOWED FOR EACH AUDIENCE UNLESS AN EXCEPTION IS GRANTED BY THE CHAIR.

1.1. Open Meetings Act

A copy of the Open Meetings Act is posted in the Board Room. The Board may meet in Closed Session to consider issues including, but not limited to 1) strategy sessions with respect to collective bargaining, real estate purchases, or litigation; 2) discussion regarding deployment of security personnel or devices; 3) investigative proceedings regarding allegations or misconduct; or 4) evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person or persons. The vote to hold a Closed Session shall be taken in open session and the subject matter and reason for the session shall be included in the motion. The motion and the vote of each member of the Board and the time when the session commenced and concluded shall be recorded in the minutes. If the motion passes, the President will restate on the record the limitation of the subject matter of the Closed Session.

2. CONSENT SECTION

All matters listed under the Consent Section are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, the item(s) will be considered at the end of the Consent Section.

Motion to approve the consent section as presented passed with a motion by Board Member #1 and a second by Board Member #2.

2.1. Legality of Meeting

Approve that all legal requirements have been met as to advance notice of this meeting to both individual Board Members and to the public.

2.2. Approval of Agenda

Approval of the agenda as published/revised. Note that items can be removed or amended from the published agenda at this time but additions can be made only through an emergency resolution.

2.3. Minutes from Previous Meeting(s)

2.4. Policy & Board Reports

2.4.1. Option Enrollment

2.4.2. Student Enrollment

2.5. Personnel Reports

2.5.1. Certified / Classified Monthly Personnel Report

2.6. Business Reports

2.6.1. Bill Listing

2.6.2. Fund Reports

2.7. Surplus/Salvage Items

- Grant Elementary
- Milliken Park

3. REPORT ITEMS

3.1. FEA

4. ACTION ITEMS

4.1. Board Items

4.1.1. Title IX Policy Revision

See attachments

Current Board of Education Policies 40A.4 and 53C.1b were prepared and recommended by the Perry Law firm in 2020 shortly after revisions were made to the Federal U.S. Department of Education (USDE) Rule. Since that time, there have been a number of points of clarification and additional guidance provided by the USDE.

The Perry Law Firm is recommending adoption of the revised Title IX policies incorporating the above mentioned clarification and guidance. This will be a complete replacement for the current policy. Given the timing related to printing of handbooks and the start of the school year, the administration recommends approval and waiving the two readings requirement in Board of Education Policy 85E.

Motion to approve replacing our current policy (which was created by the same law firm) with their revised policy passed with a motion by Board Member #1 and a second by Board Member #2.

4.2. Elementary/Secondary Items

4.2.1. 2022-2023 FPS Student Handbook Revisions: Elementary, Johnson Crossing, Middle School, High School, Learning Center

See attachments

Motion to approve revisions to the 2022-2023 Student Handbooks for Elementary, Johnson Crossing, Middle School, High School, and Learning Center passed with a motion by Board Member #1 and a second by Board Member #2.

4.2.2. Cooperative Sponsorship Renewal

See Memo

Motion to approve renewal of Cooperative Sponsorship agreement between Fremont High School and Archbishop Bergan High School for Girls and Boys Bowling for the 2022-2023 and 2023-2024 school years passed with a motion by Board Member #1 and a second by Board Member #2.

4.2.3. Request for Early Dismissals - FHS

See Memo

Motion to approve request for the following Fremont High School early dismissal dates for events being hosted by Fremont - Friday, Dec 2, 2022 at 12:00 p.m. for the John McMullen Wrestling Invite; Friday, January 20, 2023 at 1:30 for the Speech & Debate Tourney; Friday, April 14, 2023 at 12:00 for the Pat Murphy Track & Field Invitational passed with a motion by Board Member #1 and a second by Board Member #2.

4.3. Curriculum and Instruction Items

4.4. Personnel Items

4.4.1. 2022-2023 Employee Handbook Changes - Certified, Classified, Substitute

See attachments

Motion to approve the 2022-2023 Certified and Classified Handbooks and Substitute Teacher Handbooks passed with a motion by Board Member #1 and a second by Board Member #2.

4.5. Business/Facility Items

4.5.1. Confirming Bid Awards/Contract Approval

During the May 31, 2022 Board of Education meeting a bid awards were approved for the following projects:

Milliken Park Indoor Air Quality: Cheever Construction for \$4,7998,500.00

Fremont High School Geothermal Well Field: Mid-America Drilling for \$1,003,475.00

Bell Field Roof and Window Bid: Elkhorn West Construction for \$65,021.00.

During the May 9, 2022 Board of Education meeting a bid award was approved for the Middle School Track project: Nemaha Sports Construction for \$1,978,000.00.

Legal counsel is recommending that the Board pass the following confirming resolution ratifying the contracts and authorizing the administration to sign all necessary documents and oversee the construction.

The Board, by resolution is confirming the award and ratifying the contract documents for the above listed projects, and all associated documents related thereto according to the terms and conditions as on file with district records or such other or additional terms and provisions as negotiated and approved by the

Superintendent, Associate Superintendent or a designee, and the Board is hereby delegating to and authorizing the Superintendent, Associate Superintendent or a designee to sign, execute, and deliver the contract documents and all such related documents, make all contract payments, and to take or cause to be taken any and all other action and sign any other documents as may be necessary to complete the transaction, and to administer, operate, and/or implement the contract and all associated documents related thereto on a day-to-day basis during this project as contemplated thereby, for and on behalf of this school district, and hereby designates the Director of Operations, or another person as selected by the Associate Superintendent or a designee from time to time as its program administrator under this agreement.

Motion to approve the above resolution passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.2. Bid Approval - Bleacher Replacement Fremont High School

See attachments

On June 30, 2022 at 2:30 P.M. bids were accepted and read aloud for the Bleacher Replacement at the Fremont High School Al Bahe Gymnasium. Three vendors submitted pricing. Carroll Seating is the low bidder with \$358,355.47 submitted. The project will commence in early spring, 2023 and be completed prior to the start of the 2023-24 volleyball season. The source of funds for this project is the 2021 bond proceeds. The bid amount is in line with the pre-bid estimate.

The Board, by approving this agreement with Carroll Seating, is approving the award, the contract documents for this project, and all associated documents related thereto according to the terms and conditions as on file with district records or such other or additional terms and provisions as negotiated and approved by the Associate Superintendent or a designee, and the Board is hereby delegating to and authorizing the Associate Superintendent or a designee to sign, execute, and deliver the contract documents and all such related documents, make all contract payments, and to take or cause to be taken any and all other action and sign any other documents as may be necessary to complete the transaction, and to administer, operate, and/or implement the contract and all associated documents related thereto on a day-to-day basis during this project as contemplated thereby, for and on behalf of this school district, and hereby designates the Director of Operations, or another person as selected by the Associate Superintendent or a designee from time to time as its program administrator under this agreement.

Motion to approve Carroll Seating Company's bid of \$358,355.47 for FHS Bahe Gymnasium bleacher replacement passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.3. Hausmann Construction Modified AIA Agreement

See attachments

After an RFP/interview process as outlined in Statute the Board of Education approved Hausmann Construction for Construction Management at Risk Services for the High School project during the February 10, 2022 Board of Education Meeting. At that time a notice of intent to enter into an AIA agreement coordinated with the modified AIA B103-2017 architectural agreement based on the agreed upon fee structure was also approved. Attached is the final version of the AIA documents prepared by legal counsel and reviewed by the District administration and Hausmann Construction.

It is the recommendation of the administration to approve the AIA agreement documents as presented and authorize the Superintendent, Associate Superintendent or designee to execute the agreement and all associated documents related thereto according to the terms and conditions as on file with district records or such other or additional terms and provisions as negotiated and approved by the Superintendent, Associate Superintendent or a designee, and the Board is hereby delegating to and authorizing the Associate Superintendent or a designee to sign, execute, and deliver the contract documents and all such related documents, make all contract payments, and to take or cause to be taken any and all other action and sign any other documents as may be necessary to complete the transaction, and to administer, operate, and/or implement the contract and all associated documents related thereto on a day-to-day basis during this project as contemplated thereby, for and on behalf of this school district, and hereby designates the Director of Operations, or another person as selected by the Associate Superintendent or a designee from time to time as its program administrator under this agreement.

Motion to approve the above agreement passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.4. Residential Property Purchase Agreement

See attachments

Motion that the Board of Education of this School District should and does hereby ratify, authorize and approve the residential real estate purchase and sale agreement ("Purchase Agreement") by and between Vicki Edwards, as Seller, and Fremont Public Schools, as Buyer, for the purchase of the residential real property located at 319 W Washington Street, Fremont, Dodge County, Nebraska, in the form on file with official records of the School District or with such changes as are deemed necessary and in the best interest of the School District and approved by the Board President, Superintendent of Schools, or

designee of either, and authorize and ratify the Board President or Superintendent of Schools, or designee to sign and deliver the Purchase Agreement, to sign and deliver any documents, or other agreements called for in such Purchase Agreement, to retain any necessary professionals for assistance, to pay the purchase price and all other related costs and expenses, and to take all other action necessary to close the purchase and conveyance transaction and to carry such Purchase Agreement into effect, and approve purchase of property at 319 W Washington Street for \$120,000.00 with an appraised value \$122,000.00 passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.5. Concrete Removal and Replacement Throughout the District

4.5.6.

See Memo and Document

Motion to approve utilizing the services of Sawyer Construction for concrete removal, repair and/or replacement at Bell Field Elementary, Davenport Elementary, Fremont Middle School, Johnson Crossing Academic and Achievement Center, Grant Elementary, Howard Elementary and Linden Elementary for a not to exceed cost of \$36,370.00, paid through the Depreciation Fund passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.7. Milliken Park Prep and Paint 2002 Addition

See memo, proposal, and bid tab

Motion to approve services of services of Gerst Painting Inc for prepping and painting the walls, door frames and window frames of the 2002 addition for a not to exceed cost of \$15,993.00, through the Depreciation Fund passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.8. Lenihan ESSERS IAQ Project Bids

See attachments

On June 30, 2022 at 2:00 P.M. bids were accepted and read aloud for the Lenihan Indoor Air Quality Project. Three contractors submitted pricing. D.R. Anderson, the apparent low bidder (\$2,649,000) submitted a notation of an irregularity in their bid - not including the scope for replacement of the curved clerestory in the Sensory Garden. The second lowest bidder also noted an irregularity for the same scope of work. The third bidder's proposal did not include a similar notation. In addition to the irregularities, all bids were in excess of the pre-bid budget for the project.

Based on the attached recommendation of BVH Architects, the administration recommends that the Board of Education deny all bids and re-bid the project per Board of Education policy 35 E. In order to remedy the lack of competitive pricing on the curved clerestory, this scope of work will be included as an alternate. To accommodate an accelerated bid process, a special meeting of the Board of Education may be considered to consider bids. Policy 35 E allows for an accelerated timeline which continues to insure a competitive bidding environment.

Motion to hereby rejects all bids as submitted for the Fremont Public Schools Lenihan Building Improvements project located at 130 E. 9th Street, Fremont, Nebraska, 68025, United States due to noted irregularities in the documents and the bids submitted exceeding the project budget, and further hereby authorizes and directs the administration to coordinate and work with the project architect to develop documents to rebid the project in accordance with any applicable protocols or requirements of Board of Education policy 35 E passed with a motion by Board Member #1 and a second by Board Member #2.

4.5.9. Tuition Rates 2022-2023

See Attachment

Motion to approve 2022-2023 Tuition Rates as presented passed with a motion by Board Member #1 and a second by Board Member #2.

5. CLOSED SESSION

Motion to go into Closed Session to prevent the needless injury to the reputation of an individual or individuals in discussion of personnel matters, and consider issues in the public interest passed with a motion by Board Member #1 and a second by Board Member #2.

6. ADJOURNMENT

Motion to adjourn passed with a motion by Board Member #1 and a second by Board Member #2.

Posted Locations:

- Fremont Tribune
Posted Date: 6/4/22

- Dodge County Courthouse
- City of Fremont Municipal Building
- Main Street Education and Administration Center
Posted Date: 6/8/22

Board of Education Regular Meeting
Monday, June 13, 2022 6:30 PM
Board Room
Main St Education and Administration Center
130 E 9th St
Fremont, NE 68025
Attendance Taken at 6:30 PM.

Todd Hansen: Present
Jon Ludvigsen: Present
Pam Murphy: Present
Mike Petersen: Present
Sandi Proskovec: Present
Terry Sorensen: Present

1. CALL TO ORDER AND ROLL CALL

1.1. Open Meetings Act

2. CONSENT SECTION

Motion to approve the consent section as presented passed with a motion by Terry Sorensen and a second by Mike Petersen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Mike Petersen: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea
Yea: 6, Nay: 0

2.1. Legality of Meeting

Approved that all legal requirements have been met as to advance notice of this meeting to both individual Board Members and to the public.

2.2. Approval of Agenda

Approved the agenda as revised.

2.3. Minutes from Previous Meeting(s)

[May 9, 2022](#)

[May 31, 2022 Special Meeting](#)

2.4. Policy & Board Reports

2.4.1. [Option Enrollment](#)

2.4.2. [Student Enrollment](#)

2.5. Personnel Reports

2.5.1. [Certified / Classified Monthly Personnel Report](#)

2.6. Business Reports

2.6.1. [Bill Listing](#)

2.6.2. [Fund Reports](#)

2.7. Surplus/Salvage Items

- [Clarmar](#)
- [Grant](#)
- [Linden](#)
- Milliken Park [1](#), [2](#)
- [Middle School](#)
- [High School](#)
- [Food Service](#)
- [Facilities](#)

3. REPORT ITEMS

3.1. FEA

Teachers in the audience introduced themselves.

3.2. [Update on Board of Education Goal #2 Facilities: Bond Project Update](#)

Cleveland Reeves and Garrett Peterson with BVH presented an update on the bond projects.

3.3. Update on Board Goal #2 Assessment of our Learning Environments, and Board Goal #5 School and Community Climate / Culture: [Safety and Security Update](#)

Kevin Kavan provided an update on School Safety and Security. During the presentation it was noted that on July 21, 2022, there will be an Active Shooter Training at Fremont Middle School.

3.4. Review [Board Policy 51A Compulsory Attendance and Excessive Absence](#)

Reviewed by Kevin Eairleywine.

3.5. Review [Board Policy 52B Student Code of Conduct](#)

Reviewed by Kevin Eairleywine.

3.6. Review [Board Policy 53C.1a Student Harassment \(Bullying\)](#)

Reviewed by Kevin Eairleywine.

7:37 p.m: Board President Sandi Proskovec stated there will now be a 5 minute break.

7:42 p.m: Meeting resumed without Mike Petersen due to a scheduling conflict.

4. ACTION ITEMS

4.1. Board Items

4.1.1. Hearing - District's Plan for Safe Return and ARP-ESSERS

ESSRS requirement (every six months)

Public input and public comment

Copy on district website [District's Plan for Safe Return and ARP-ESSERS](#)

Superintendent Mark Shepard

Motion to open the hearing to receive public input and public comment on the District's Plan for Safe Return and ARP-ESSERS - a copy of which is posted to the District's website passed with a motion by Terry Sorensen and a second by Pam Murphy.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry

Sorensen: Yea

Yea: 5, Nay: 0

There was no public comment.

Motion to close the hearing on the District's Plan for Safe Return and ARP-ESSERS passed with a motion by Jon Ludvigsen and a second by Pam Murphy.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry

Sorensen: Yea

Yea: 5, Nay: 0

4.1.2. [Policy Hearing, Parent Involvement Policy 12A](#)

State statute requires that the board hold a public hearing on this policy to discuss, consider, and receive input, and then either alter and adopt the revised policy or reaffirm the policy as written.

Motion to open hearing on the Parent Involvement Policy passed with a motion by Pam Murphy and a second by Todd Hansen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry

Sorensen: Yea

Yea: 5, Nay: 0

There was no public comment.

Motion to close hearing on the Parent Involvement Policy passed with a motion by Terry Sorensen and a second by Todd Hansen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry

Sorensen: Yea

Yea: 5, Nay: 0

4.1.3. [Board of Education Policy 52B.7 Graduation Requirements](#)

At the request of the Board of Education, Myron Sikora, FHS Principal convened a committee to study the High Schools current requirements. The purpose of the committee work was to consider modifications to bring the policy in line with other school districts while honoring and recognizing individuals that exceed the minimum requirements.

On May 17 the committee presented their recommendations to the Board of Education Policy Committee for consideration. The Policy Committee agreed with the changes and offered additional accountability for students / parents who are pursuing the standard diploma (210 credit hours) - a meeting attended by the student, parent, guidance counselor and administrative representative is required as part of the process.

An amended policy was recommended for approval. It is further recommended that the second reading is waived to allow for the amended policy to be incorporated into the student handbooks for the 2022-23 school year.

Motion to approve Revised Board Policy 52.B7 Graduation Requirements passed with a motion by Terry Sorensen and a second by Jon Ludvigsen.

Todd Hansen: Nay, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea
Yea: 4, Nay: 1

4.1.4. Policy Hearing - Student Fees 53C.4

Attachments: [JCAC](#), [FMS](#), [FHS](#)

Statutes require that there be a public hearing each year concerning the revenues under student fees and any policy revisions. The Board President called for a motion to open the hearing on Student Fees.

Motion to open the hearing on the Student Fee Policy passed with a motion by Pam Murphy and a second by Terry Sorensen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea
Yea: 5, Nay: 0

There was no public comment.

Motion to close the hearing on the Student Fee Policy passed with a motion by Jon Ludvigsen and a second by Pam Murphy.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea
Yea: 5, Nay: 0

4.1.5. Revised Board Policy 53C.4 Student Fees, 1st Reading

It was requested that the Board waive the two-reading requirement as provided in Board Policy 85E and approve the policy and administrative regulations after one reading, in order to publish the policy as a part of the handbooks rather than as an addendum.

Motion to approve Revised Board Policy 53C.4 Student Fees after one reading passed with a motion by Pam Murphy and a second by Terry Sorensen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea

Yea: 5, Nay: 0

4.1.6. Revised Board Policy [Appendix 1](#) and [1a](#) to 51A.2a Open Enrollment Option Program

Because of apparent litigation that has occurred in other locations in the state, legal counsel has advised us to update program and grade level capacities each year to be in effect for the following year.

It was requested that the Board waive the two-reading requirement as provided in Board Policy 85E and approve the policy and administrative regulations after one reading in order to publish the policy as a part of the handbooks rather than as an addendum.

Motion to approve program capacities and the numbers of option students that can be accommodated for 2022-2023 passed with a motion by Terry Sorensen and a second by Pam Murphy.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea

Yea: 5, Nay: 0

4.2. Elementary/Secondary Items

4.2.1. [Foreign Exchange Students 2022-2023](#)

see attached

Motion to approve six foreign exchange students for the 2022-2023 school year passed with a motion by Jon Ludvigsen and a second by Terry Sorensen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea

Yea: 5, Nay: 0

4.2.2. Donation to [Bell Field, Grant, and Linden Elementary Schools](#)

See donation forms

Motion to approve donation of Buddy Benches valued at \$900.00 each to Bell Field, Grant, and Linden Elementary Schools from the Marilyn Mitchell Memorial Fund passed with a motion by Pam Murphy and a second by Jon Ludvigsen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea

Yea: 5, Nay: 0

4.3. Curriculum and Instruction Items

4.4. Personnel Items

4.5. Business/Facility Items

4.5.1. Asphalt Projects

[See Memo](#), [See Pricing](#)

Motion to approve contracting with OMNI Engineering to crack-seal and sealcoat asphalt parking lots at the Fremont High School, the parking lot and playground at Grant Elementary and the playground at Davenport Elementary at a cost of \$39,893.00; and to contract with Parking Lot Maintenance, Inc. to crack-seal and sealcoat the Facilities/Transportation lot at a cost of \$11,550.00 for a combined not to exceed cost of \$51,389.00 paid through the Depreciation Fund passed with a motion by Terry Sorensen and a second by Pam Murphy.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea

Yea: 5, Nay: 0

4.5.2. Authorization of Assurances

Each year the Board of Education needs to authorize a representative of the District to sign State and Federal Grant Assurances. Approval of the Superintendent as the authorized representative to sign State and Federal Grant Assurances is requested for the 2022-2023 school year.

Motion to approve Superintendent Mark Shepard as authorized representative to sign State and Federal Grant Assurances passed with a motion by Terry Sorensen and a second by Pam Murphy.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea

Yea: 5, Nay: 0

5. CLOSED SESSION

6. ADJOURNMENT

Motion to adjourn passed with a motion by Terry Sorensen and a second by Jon Ludvigsen.

Todd Hansen: Yea, Jon Ludvigsen: Yea, Pam Murphy: Yea, Sandi Proskovec: Yea, Terry Sorensen: Yea 8:26 p.m.

Yea: 5, Nay: 0

Board Secretary

**FREMONT PUBLIC SCHOOLS
OPTION ENROLLMENT REPORT
July 11, 2022**

ENTER 2022-2023

<u>Grade</u>	<u>From</u>
Cockrum, Aleah Prefers Grant (attended Grant PreK)	K Logan View

Sorensen, Kaden	K Wahoo
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EXIT 2022-2023

<u>Grade</u>	<u>To</u>
Arent, Zoe	K Cedar Bluffs

Bartolomea, Namari	K Cedar Bluffs
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Brown, Dak	K Cedar Bluffs
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Czech, Olivia	K Cedar Bluffs
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Daniel, Emery	K Cedar Bluffs
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Guerrero, Jasmine	10 Cedar Bluffs
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Hand, Wyatt	K Cedar Bluffs
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Klein, Drake	K Cedar Bluffs
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Meyer, Aiden	K Cedar Bluffs
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Porter, Sarenatie 2 year rule applies	8 North Bend
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Reade, Ian	K Cedar Bluffs
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Roumph, William	K Cedar Bluffs
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Sukstork, Kyla	K Cedar Bluffs
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Sukstorf, McKenzie	Cedar Bluffs
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Tant, Izik 2 yr rule applies	10 North Bend
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Wagoner, Maverick	K Cedar Bluffs
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Change of Status

Heir-leif, Peyton Withdrew application to option into Fremont from Logan View, will attend resident district Logan View	K
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Jensen, Jayden Previous option from Fremont to Bellevue, return to resident district Fremont	11
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Denied

Justice, Iziah

8

Denied by Logan View to option in from Fremont, program at capacity

Graduated 2022:

Graduated from Fremont Public Schools:

Bachmann, Adeleigh
Contreras, Saul
Harrington, Kayley
McCabe, Taylor
Popp, Alena
Salas, Sherlyn
Sintek, Carter
Tedrow, Taelyn
Tenney, Sierra
Vaughn, Lily
Vincent, Micah

Option in from:

Schuyler
North Bend
Logan View
Blair
Cedar Bluffs
Elkhorn
Bennington
Westside
Arlington
Logan View
Cedar Bluffs

Graduated from Mead:

Carritt, Andrew

Graduated from Cedar Bluffs:

Baustian, Caleb
Cinto, Carol
Facklam, Kaylee
Fox, Mikya
Gore, Wyatt
Kenney, Liam
Kluthe, Zephan
Lembke, Hayden
Matz, Mackenzie

Elementary – Julie Anderson
Elementary Secretaries
Middle School Guidance
Senior High Guidance
Student Services – Brad Dahl
Transportation – Jeff Rump
Athletic Director – Scott Anderson

Registrar – Lori Essen
K-12 Principals

FPS Human Resources Report

July 11, 2022

The following report is position centric. The 'Employee' column is the name of the current/previous employee in that position. The 'Effective Date' is the date in which the Action takes effect. The 'Replacement Status/New Hire' column is the newly hired employee who will fill the position noted in the 'Position' column. Action items are bold/highlighted and are new to the report.

*Classified employee is staying on in a substitute status

ACTION ITEMS

CERTIFIED PERSONNEL

Position	Employee	Action	Effective Date	Site/Department	Replacement Status/New Hire	Start Date
Teacher, Kindergarten	Laura Carlton	Transfer	2022/2023 School Year	Grant	Megan Daniels	2022/2023 School Year
Teacher, Kindergarten	Brianna Bentley	Transfer	2022/2023 School Year	Washington	Shelley Kirk	2022/2023 School Year
Teacher, Was Industrial Technology, will now be Career Exploration	Jamison Baird	Resignation	5/23/2022	Middle School	Elizabeth Wess	2022/2023 School Year

CLASSIFIED PERSONNEL

Position	Employee	Action	Effective Date	Site/Department	Replacement Status/New Hire	Start Date
Bus Aide (8 hrs)	Lyle Boggs	Resignation	5/20/2022	Transportation	Taelyn Tedrow	6/21/2022
Custodian II (8 hrs)	Allen Styskal	Transfer	6/1/2022	Middle School	Silvia Villegas	6/8/2022
Custodian II (8 hrs)	Karen Collette	Resignation	3/11/2022	Johnson Crossing	Allen Styskal	6/1/2022
ELL Paraeducator (7 hrs)	*Miriam Jimenez Ochoa	Resignation	5/23/2022	Linden	Karen Jimenez	August 2022
Food Service Worker (4.5 hrs)	Alissa Linares	Resignation	6/14/2022	Bell Field	Posted/Pending Hire	TBD

Food Service Worker (was 6.75 hrs, will now be 5.75 hrs)	Silvia Villegas	Transfer	6/8/2022	Middle School	Hired/Pending Paperwork	TBD
Paraeducator (6.5 hrs)	Amanda Vesper	Transfer	August 2022	Bell Field	Posted/Pending Hire	TBD
Paraeducator (7 hrs)	*Elle Kumm	Resignation	4/8/2022	Linden	Katrina Ryun	August 2022
Paraeducator (7.5 hrs)	Abigale Lueders	Transfer	August 2022	Milliken Park	Posted/Pending Hire	TBD
Paraeducator (was 5.75, will now be 6.5 hrs)	Rochelle Mostek	Resignation	5/2/2022	Bell Field	Lindsey Boehlke	August 2022
Special Ed. Para (7 hrs)	*Floyd Knodel	Resignation	12/16/2021	Bell Field	Amanda Vesper	August 2022
Special Ed. Para (Pre-K, 7 hrs)	*Karla Alvarado	Resignation	5/19/2022	Milliken Park	Abigale Lueders	August 2022
Special Ed. Para (Pre-K, 7 hrs)	Karen Jimenez	Transfer	August 2022	Linden	Posted/Pending Hire	TBD
Special Ed. Para (R3) (7 hrs)	Lindsey Boehlke	Transfer	August 2022	Bell Field	Ashley Wagner	August 2022

21st CENTURY/EXPANDED LEARNING/AFTER SCHOOL PROGRAM

Position	Employee	Action	Effective Date	Site/Department	Replacement Status/New Hire	Start Date
<i>No Actions</i>						

General Fund Expenditures
JUNE 2022

Accounts Payable	\$1,119,964.11
Payroll	\$4,221,192.42
	<hr/>
TOTAL General Fund	\$5,341,156.53

Fremont Public Schools
Check Listing
2021-2022

Bank Account: First State Bank A/P 451126 From: 6/1/22 To: 6/30/22

Check Number	Date	Payee	Amount
123339	6/30/2022	A UNITED AUTOMATIC DOORS & GLASS INC	\$282.50
123340	6/30/2022	ACE HARDWARE	\$400.37
123256	6/13/2022	ADVENTURE ENTERPRISES, LLC	\$921.00
123341	6/30/2022	ADVENTURE ENTERPRISES, LLC	\$853.00
123342	6/30/2022	ALL SYSTEMS LLC	\$2,739.00
123257	6/13/2022	AMAZON.COM LLC	\$17,814.58
123343	6/30/2022	AMAZON.COM LLC	\$11,181.95
123344	6/30/2022	AMPLIFY EDUCATION, INC	\$407.00
DDP	6/15/2022	ANDERSON, SCOTT MICHAEL	\$466.83
DDP	6/15/2022	ANKERSEN, MARK	\$5.03
123330	6/22/2022	AUTOMOTIVE WORKWEAR, INC	\$3,270.08
123258	6/13/2022	B & H PHOTO-VIDEO	\$256.45
123345	6/30/2022	BARNES AND NOBLE INC	\$99.75
123346	6/30/2022	BAUER BUILT INC	\$750.27
123259	6/13/2022	BAYLOR ENTERPRISES INC	\$19,700.00
123347	6/30/2022	BAYLOR ENTERPRISES INC	\$2,420.00
DDP	6/15/2022	BEAVER, BOB	\$17.49
DDP	6/15/2022	BEHRING, JENNIFER	\$41.94
123260	6/13/2022	BENICOMP INC	\$663.57
123348	6/30/2022	BENICOMP INC	\$494.80
DDP	6/15/2022	BERRY, DEANN	\$24.27
123349	6/30/2022	BIOLOGIX	\$1,002.00
DDP	6/15/2022	BLANKINSHIP, JANICE	\$14.38
123261	6/13/2022	BLICK ART MATERIALS	\$3,293.78
123350	6/30/2022	BLICK ART MATERIALS	\$279.98
123262	6/13/2022	BOMGAARS SUPPLY INC	\$6.99
123351	6/30/2022	BOMGAARS SUPPLY INC	\$62.97
DDP	6/15/2022	BOOTH, KRISTI	\$17.49
123352	6/30/2022	BORDER STATES INDUSTRIES INC	\$307.63
123353	6/30/2022	BOUND TO STAY BOUND BOOKS	\$245.09
123354	6/30/2022	BVH ARCHITECTS, LTD	\$345,365.77
123263	6/13/2022	CARE CORPS INC	\$1,651.71
123264	6/13/2022	CENGAGE LEARNING INC	\$916.24
123355	6/30/2022	CENTRAL VALLEY AG	\$661.02
123265	6/13/2022	CENTRALREACH, LLC	\$526.40
123336	6/29/2022	Century Link	\$148.93
123356	6/30/2022	Century Link	\$782.95
123331	6/22/2022	CITY OF FREMONT	\$35,763.04
123357	6/30/2022	CITY OF FREMONT	\$437.50
123266	6/13/2022	COMPUTER SUPPLY PEOPLE	\$1,025.30

Check Number	Date	Payee	Amount
123358	6/30/2022	CONTROL DEPOT, INC	\$489.98
123359	6/30/2022	CORNHUSKER INTERNATIONAL TRUCKS INC	\$258.70
123267	6/13/2022	CULLIGAN	\$345.00
123360	6/30/2022	CULLIGAN	\$890.75
123361	6/30/2022	DISCOUNT SCHOOL SUPPLY	\$245.70
DDP	6/15/2022	DOSTAL, ERIN	\$69.61
123268	6/13/2022	EASTERN NEBRASKA OCCUPATIONAL THERAPY	\$11,567.68
123269	6/13/2022	ECO WATER SYSTEMS	\$202.75
123362	6/30/2022	ECO WATER SYSTEMS	\$292.70
123363	6/30/2022	EDUCATIONAL CONSULTING SERVICE	\$2,430.00
123270	6/13/2022	EDUCATIONAL SERVICE UNIT #2	\$3,015.00
123364	6/30/2022	EDUCATIONAL SERVICE UNIT #2	\$97,271.12
123271	6/13/2022	EDUCATIONAL SERVICE UNIT #7	\$6,814.60
123365	6/30/2022	EDUCATIONAL SERVICE UNIT #7	\$3,530.80
123366	6/30/2022	EDUSPIRE SOLUTIONS LLC	\$3,825.00
123367	6/30/2022	EGAN SUPPLY CO	\$1,672.00
123272	6/13/2022	ELECTRONIC CONTRACTING CO.	\$1,064.57
123368	6/30/2022	ELECTRONIC ENGINEERING	\$904.00
DDP	6/15/2022	ELSASSER, KIERSTEN	\$73.82
123273	6/13/2022	ERIC ARMIN INC	\$97.19
123369	6/30/2022	ERIC ARMIN INC	\$63.90
123370	6/30/2022	FASTENAL COMPANY	\$15.57
123274	6/13/2022	FBG SERVICE CORPORATION	\$49,406.00
DDP	6/15/2022	FELDHAUS, JAMES	\$51.16
123371	6/30/2022	FIFTH SEASON, INC.	\$411.00
123372	6/30/2022	FILTER SHOP INC	\$4,870.52
123275	6/13/2022	FIRST NATIONAL BANK OMAHA	\$174.62
123373	6/30/2022	FIRST NATIONAL BANK OMAHA	\$2,596.67
DDP	6/15/2022	FISCHER, ROBERT	\$15.85
123276	6/13/2022	FOLLETT CONTENT SOLUTIONS, LLC	\$3.99
123277	6/13/2022	FORNOFF & SCHUTT PC	\$261.09
DDP	6/15/2022	FOXHOVEN, RICK	\$100.69
123374	6/30/2022	FPS FOOD SERVICE	\$82.71
123375	6/30/2022	FPS SPECIAL BUILDING FUND	\$8,750.00
123278	6/13/2022	FREMONT AREA CHAMBER	\$350.00
123279	6/13/2022	FREMONT AREA UNITED WAY	\$700.00
123280	6/13/2022	FREMONT DEPT OF UTILITIES	\$75,483.53
123376	6/30/2022	FREMONT DEPT OF UTILITIES	\$26,196.07
123281	6/13/2022	FREMONT ELECTRIC INC	\$320.00
123282	6/13/2022	FREMONT FAMILY YMCA	\$4,788.34
123377	6/30/2022	FREMONT FAMILY YMCA	\$690.74
123378	6/30/2022	FREMONT MIDDLE SCHOOL ACTIVITY ACCOUNT	\$3,480.00
123283	6/13/2022	FREMONT ROTARY CLUB	\$350.00
123337	6/29/2022	FREMONT ROTARY CLUB	\$175.00
123284	6/13/2022	FREMONT TRIBUNE	\$121.26
123379	6/30/2022	FREMONT TRIBUNE	\$147.28

Check Number	Date	Payee	Amount
123285	6/13/2022	FREMONT WASTE TRANSFER	\$157.99
123380	6/30/2022	FREMONT WASTE TRANSFER	\$100.04
DDP	6/15/2022	GALLO, LISA	\$22.69
123286	6/13/2022	GARTNER & ASSOCIATES INC	\$124.00
123381	6/30/2022	GARTNER & ASSOCIATES INC	\$378.00
123287	6/13/2022	GLASS HOUSE	\$176.00
123382	6/30/2022	GLASS HOUSE	\$290.00
DDP	6/15/2022	GLEASON, LATOSHA	\$13.57
123383	6/30/2022	GP ARCHITECTURE, LLC	\$6,301.20
123384	6/30/2022	GREAT PLAINS COMMUNICATIONS	\$1,284.38
123385	6/30/2022	GUMDROP BOOKS	\$1,040.39
DDP	6/15/2022	HANSEN, SHANNON	\$173.16
DDP	6/15/2022	HILGENKAMP, DAVE	\$157.65
123288	6/13/2022	HILLYARD SIOUX FALLS, RAPID CITY, SD, OM	\$77.17
123332	6/22/2022	HOMETOWN LEASING	\$15,055.29
123255	6/3/2022	HY-VEE INC	\$2,229.09
123335	6/27/2022	HY-VEE INC	\$3,065.11
123386	6/30/2022	INDRA MOWING LLC	\$3,180.00
123387	6/30/2022	INTERSTATE CHEMICAL CO INC	\$762.20
123289	6/13/2022	J.W. PEPPER & SON INC	\$86.96
DDP	6/15/2022	JIRSAK, JAZMINE	\$7.48
123388	6/30/2022	JOHN DEER FINANCIAL	\$108.20
123389	6/30/2022	JOHNSON CROSSING ACTIVITY FUND	\$735.00
123390	6/30/2022	JOURNEY ED.COM INC	\$24,527.28
123290	6/13/2022	KANSAS CITY AUDIO-VISUAL INC	\$5,293.71
DDP	6/15/2022	KERKMAN, RITA	\$28.37
123391	6/30/2022	KOLEY JESSEN P.C., L.L.O.	\$87.00
DDP	6/15/2022	KUBICEK, MELISSA	\$33.28
DDP	6/15/2022	KUKOLY, BELINDA	\$43.40
123291	6/13/2022	LAKESHORE LEARNING MATERIALS	\$647.20
123392	6/30/2022	LAKESHORE LEARNING MATERIALS	\$538.42
123292	6/13/2022	LANGUAGE LINE SERVICES, INC.	\$509.85
123393	6/30/2022	LINCOLN JOURNAL STAR	\$39.57
123293	6/13/2022	LOU'S SPORTING GOODS	\$67.00
123294	6/13/2022	MACGILL & CO	\$658.25
123394	6/30/2022	MACGILL & CO	\$2,222.63
DDP	6/15/2022	MARTIN, KARIE	\$23.57
123295	6/13/2022	MAX D. SIGNS	\$2,692.83
DDP	6/15/2022	MCCLAIN, SETH	\$212.94
DDP	6/15/2022	MCDUFFEE, ROLLIN	\$60.98
123334	6/24/2022	MCKINNIS ROOFING & SHEET METAL INC	\$20,700.00
123395	6/30/2022	MCKINNIS ROOFING & SHEET METAL INC	\$44,010.00
123296	6/13/2022	MENARDS	\$454.50
123396	6/30/2022	MENARDS	\$584.88
123397	6/30/2022	METHODIST FREMONT HEALTH	\$6,419.61
123297	6/13/2022	MIDLAND UNIVERSITY	\$15,330.00

Check Number	Date	Payee	Amount
123399	6/30/2022	MIDLAND UNIVERSITY	\$16,425.00
123398	6/30/2022	MID-PLAINS HOSPITALITY GROUP, INC	\$439.80
123298	6/13/2022	MONOPRICE INC	\$4,179.92
123299	6/13/2022	MY CENTRAL SUPPLY	\$350.00
123300	6/13/2022	NASCO	\$1,434.47
123400	6/30/2022	NASCO	\$548.90
123301	6/13/2022	NAVIGATOR MOTORCOACHES INC	\$1,050.00
123401	6/30/2022	NEBRASKA LIBRARY COMMISSION	\$2,543.38
123302	6/13/2022	NEBRASKA SIGN & COVER-IT	\$62.00
123403	6/30/2022	OMAHA CHILDREN'S MUSEUM	\$550.00
123304	6/13/2022	Omaha World Herald	\$8,647.00
123404	6/30/2022	Omaha World Herald	\$4,357.00
DDP	6/15/2022	ONDRACEK, TAMMIE	\$27.02
123305	6/13/2022	ONE SOURCE	\$539.00
123405	6/30/2022	ONE SOURCE	\$745.00
123303	6/13/2022	O'REILLY AUTOMOTIVE INC	\$69.81
123402	6/30/2022	O'REILLY AUTOMOTIVE INC	\$388.24
123306	6/13/2022	OSP LLC	\$600.00
123406	6/30/2022	P & H ELECTRIC INC	\$75.00
123307	6/13/2022	PAPER TIGER SHREDDING INC	\$486.00
123308	6/13/2022	PERFORMANCE DIESEL SERVICE	\$1,330.21
123309	6/13/2022	PERRY, GUTHERY, HAASE & GESSFORD, P.C.,	\$1,875.00
DDP	6/15/2022	PETERSON, ANN	\$173.09
DDP	6/15/2022	PISTILLO, MARY PAT	\$76.92
DDP	6/15/2022	PLATT, HAYLEY	\$6.31
123310	6/13/2022	PRIME COMMUNICATIONS, INC	\$20,447.37
123311	6/13/2022	PROGRESS PUBLICATIONS	\$372.00
DDP	6/15/2022	PRONSKE, NICOLE	\$36.67
123407	6/30/2022	R TESTING LLC	\$245.00
123312	6/13/2022	RAPTOR TECHNOLOGIES, LLC	\$2,100.00
123408	6/30/2022	RAPTOR TECHNOLOGIES, LLC	\$300.00
123409	6/30/2022	RAWHIDE CHEMOIL INC	\$654.31
123410	6/30/2022	REALLY GOOD STUFF INC	\$557.97
123313	6/13/2022	REALLY GREAT READING COMPANY, LLC	\$1,563.50
123411	6/30/2022	REALLY GREAT READING COMPANY, LLC	\$218.40
123314	6/13/2022	RIVERSIDE CONSTRUCTION INC	\$1,518.50
DDP	6/15/2022	ROBERTSON, LISA	\$187.60
123315	6/13/2022	ROCHESTER MIDLAND CORP	\$306.24
123412	6/30/2022	ROCHESTER MIDLAND CORP	\$1,362.72
123413	6/30/2022	RUFF HOUSE	\$385.00
123414	6/30/2022	S2 ROLL-OFFS, LLC	\$2,054.00
123415	6/30/2022	SAPP BROS, INC	\$13,230.51
DDP	6/15/2022	SCHLAPFER, LINDA	\$2,188.58
123316	6/13/2022	SCHOOL SPECIALTY	\$2,133.74
123416	6/30/2022	SCHOOL SPECIALTY	\$1,268.17
123317	6/13/2022	SELCOM, LLC	\$175.00

Check Number	Date	Payee	Amount
123318	6/13/2022	SENIOR HIGH ACTIVITY FUND	\$625.00
123417	6/30/2022	SENIOR HIGH ACTIVITY FUND	\$6,570.00
123418	6/30/2022	SID DILLON	\$124.94
123319	6/13/2022	STAPLES ADVANTAGE	\$21,264.09
123419	6/30/2022	STAPLES ADVANTAGE	\$9,519.59
123320	6/13/2022	STARFALL EDUCATION FOUNDATION	\$355.00
DDP	6/15/2022	STEWART, COURTNEY	\$55.62
DDP	6/15/2022	STOKLASA, LAUREN	\$74.06
DDP	6/15/2022	STYSKAL, STEVE	\$293.30
123420	6/30/2022	SUPER DUPER INC	\$82.40
DDP	6/15/2022	SYNNOTT, JAIMIE	\$13.80
DDP	6/15/2022	TALKINGTON, BEVERLY	\$13.80
123421	6/30/2022	TEACHER DIRECT	\$557.76
123321	6/13/2022	TEACHERS PAY TEACHERS	\$138.25
123422	6/30/2022	TERRY WALLERSTEDT	\$400.00
123423	6/30/2022	THE BRIDGE	\$1,536.23
123322	6/13/2022	THE HOME DEPOT PRO	\$10,178.65
123333	6/22/2022	THE HOME DEPOT PRO	\$4,712.38
123338	6/29/2022	THE HOME DEPOT PRO	\$871.34
123424	6/30/2022	THE HOME DEPOT PRO	\$1,598.35
123425	6/30/2022	TIMME WELDING & SUPPLY	\$50.00
123323	6/13/2022	TK Elevator	\$536.95
123324	6/13/2022	TONY VINCENT, INC	\$120.00
DDP	6/15/2022	TRIMPE, SARAH	\$11.11
DDP	6/15/2022	TURNER, ELIZABETH	\$73.41
123426	6/30/2022	TURNITIN, LLC	\$15,757.41
123427	6/30/2022	U.S. POSTAL SERVICE	\$4,000.00
123428	6/30/2022	UNITED PARCEL SERVICE INC	\$16.13
123429	6/30/2022	US OMNI & TSACG COMPLIANCE SERVICES	\$71.06
123325	6/13/2022	VOYAGER SOPRIS LEARNING, INC	\$501.60
123430	6/30/2022	VOYAGER SOPRIS LEARNING, INC	\$209.00
123326	6/13/2022	WALNUT RADIO LLC	\$872.00
DDP	6/15/2022	WEITZENKAMP, TERI	\$513.78
123431	6/30/2022	WELDERMADE LLC	\$535.36
123327	6/13/2022	WEST MUSIC	\$111.58
123328	6/13/2022	Wex Bank	\$85.00
DDP	6/15/2022	WHITLEY, ASHLEY	\$133.96
123432	6/30/2022	WIESE PLUMBING & EXCAVATING INC	\$3,580.00
123329	6/13/2022	WORTHINGTON DIRECT HOLDINGS, LLC	\$4,804.00
DDP	6/15/2022	WUESTEWALD, GWEN	\$12.90
DDP	6/15/2022	ZRLRNY, BAILEY	\$3.10
		TOTAL	<u>\$1,119,964.11</u>

Fremont Public Schools
Financial Reports

Recommendation

June 30, 2022

Submitted by: Susan Plank

The attached reports are for your information, review and approval:

Summary Statement of General Fund Accounts (at June 30)
Activity Fund Balance Sheets

This Summary of General Fund accounts for the Fiscal Year 2021-22 represents our approved budget and corresponding expenditures through this month-end. It is recommended that the June 2022 Financial Statements be accepted by the Board of Education as presented.

Moved by: _____

Seconded by: _____

Roll Call Vote --

Aye: _____

No: _____

Absent: _____

**Fremont Public Schools
June 30, 2022**

<u>Fund Name</u>	<u>Balance</u> <u>5/31/2022</u>	<u>Receipts June</u>	<u>Disbursements</u> <u>June</u>	<u>Statement</u> <u>Balance</u> <u>6/30/2022</u>	<u>Interfund</u> <u>Transfers</u>	<u>Account Balance</u> <u>Without</u> <u>Transfers</u>
<u>First National Bank Fremont:</u>						
General Fund	\$14,044,214.15	\$4,775,119.95	\$5,063,427.60	\$13,755,906.50	\$0.00	\$13,755,906.50
Payroll	\$25,035.37	\$4,313,861.21	\$4,248,923.46	\$89,973.12	\$0.00	\$89,973.12
Flex Benefit Fund	\$52,316.23	\$16,229.64	\$11,269.53	\$57,276.34	\$0.00	\$57,276.34
Employee Benefit Fund (Closed)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Special Building Fund	\$1,159,149.04	\$40,429.50	\$0.00	\$1,199,578.54	\$0.00	\$1,199,578.54
Life Safety	\$45,835.73	\$1.83	\$2,144.00	\$43,693.56	\$0.00	\$43,693.56
Depreciation Fund	\$4,081,040.55	\$167.72	\$0.00	\$4,081,208.27	\$0.00	\$4,081,208.27
Bond District 11	\$19,324.18	\$0.00	\$0.00	\$19,324.18	\$0.00	\$19,324.18
FPS 2022 GO Bond	\$8,422,562.42	\$678,319.30	\$2,056,101.33	\$7,044,780.39	\$0.00	\$7,044,780.39
FNBO Capital Markets End of Month	•	\$91,230,000.00				
<u>Pinnacle Bank:</u>						
General Fund	\$25,789.11	\$2.12	\$0.00	\$25,791.23	\$0.00	\$25,791.23
QCPUF Fund	\$15.89	\$0.00	\$0.00	\$15.89	\$0.00	\$15.89
<u>First State Bank:</u>						
Disbursing Account	\$228,175.67	\$749,530.81	\$639,020.63	\$338,685.85	\$0.00	\$338,685.85
<u>US Bank:</u>						
District Activity Fund	\$94,610.53	\$2,445.92	\$31,678.95	\$65,377.50	\$0.00	\$65,377.50

**Fremont Public Schools
FPS 2022 GO Bond Detail
June 2022**

Beginning Balance 5/31/2022			\$8,422,562.42
June Receipts:			\$678,319.30
6/30/2022	Investment Credit - Interest	\$3,640.63	
6/30/2022	Investment Credit - Interest	\$5,512.50	
6/30/2022	Investment Credit - Interest	\$13,015.63	
6/30/2022	Investment Credit - Interest	\$25,687.50	\$47,856.26
6/30/2022	Investment Credit - Principal		\$630,000.00
6/30/2022	Interest Payment		\$463.04
June Expenditures:			-\$2,056,101.33
5/23/2022	ck 10 Great Plains Appraisal	Commercial Appraisal (Clarmar Property)	-\$3,200.00
6/14/2022	ck 11 B2 Environmental Inc	Asbestos Sampling & Testing HS	-\$5,450.00
6/17/2022	ck 12 Olsson, Inc	Howard/Washington Geotech Exploration	-\$17,500.00
6/17/2022	ck 13 Russell D Koch	Consult,Architectural Svc, mileage reimb (5-1 tc	-\$3,852.48
		Wash Elem & Howard Elem Replacement; New CTE Bldg-HS;HS Addition/Reno/IAQ/Track & Field; New Elem Site - Clarmar	
6/17/2022	ck 14 BVH Architects		-\$2,026,098.85
Ending Balance 6/30/22 - FPS 2022 GO Bond			\$7,044,780.39
FNBO Capital Markets Par Value			\$90,600,000.00
			\$97,644,780.39

**Fremont Public Schools
Pledged Securities
6/30/2022**

Fremont National Bank

Description	Receipt #	Maturity Date	Current Face
Pooled Pledged Securities with Nebraska Bankers Insurance and Services Company			

First State Bank

Description	Receipt #	Maturity Date	Current Face
Douglas Cnty NE SD #59 GO Unltd	259353LA6	6/15/2026	\$194,560.00
Douglas Cnty NE SD #59 GO Unltd	259353MV9	12/15/2027	\$128,289.00
Fairbury NE Go Unltd	303665GH0	10/15/2026	\$166,492.90
Fremont NE GO Unltd	357406DV6	8/1/2026	\$198,376.00
Fremont NE Hgwy Alloctn GO LTD	357406EA1	12/15/2025	\$246,342.50
Gretna NE GO Unltd	397802MJ5	8/15/2027	\$218,358.80
Hall Cnty NE Arpt Auth GO Unltd	406028GM6	7/15/2026	\$176,555.75
Papillion NE GO Unltd	698856P70	12/15/2025	\$245,262.50
Sarpy Cnty NE SD#37 GO Unltd	803770VP8	12/15/2036	\$265,617.00
Scottsbluff Cnty NE SD#32 Go Unltd	810181GG6	12/1/2026	\$195,792.00
Tecumseh NE GO Unltd	878848JM3	12/15/2026	\$120,020.40
			\$2,155,666.85

**Fremont Public Schools
Pledged Securities Recap
June 30, 2022**

Fund Name	Statement Balance 6/30/2022	Total All Accounts	Total Pledged Securities Required	Total Pledged Securities Market Value	Pledging Excess/(Shortage)
<u>First National Bank Fremont:</u>					
General Fund	\$13,755,906.50				
Payroll	\$89,973.12				
Flex Benefit Fund	\$57,276.34				
Special Building Fund	\$1,199,578.54				
Life Safety	\$43,693.56				
Depreciation Fund	\$4,081,208.27				
Bond District 11	\$19,324.18				
FPS 2022 GO Bond	\$7,044,780.39				
Learning Center	\$1,807.12				
FDIC Insured \$250,000		<u>\$26,293,548.02</u>			
FNBO Capital Markets Par	\$90,600,000.00	<u>\$90,600,000.00</u>			
<u>Pinnacle Bank:</u>					
General Fund	\$25,791.23				
QCPUF Fund	\$15.89				
FDIC Insured \$250,000		<u>\$25,807.12</u>	\$0.00	\$0.00	\$0.00
<u>First State Bank:</u>					
High School Activity	\$276,029.17				
MS/JCAC Activity	\$115,747.69				
COD #30362	\$20,016.36				
FDIC Insured \$250,000		<u>\$411,793.22</u>	\$161,793.22		
Disbursing Account	\$338,685.85				
Food Service	\$250,000.00				
FDIC Insured \$250,000		<u>\$588,685.85</u>	\$338,685.85		
Food Service Sweep	\$1,602,543.55				
ICS Sweep		<u>\$1,602,587.46</u>	\$0.00		
			\$500,479.07		
Pledging Requirement 102% of Above Balance			<u>\$510,488.65</u>	\$2,155,666.85	<u>\$1,645,178.20</u>
<u>US Bank:</u>					
District Activity Fund	\$65,377.50				
Elementary Activity Fund	\$26,518.66				
FDIC Insured \$250,000		<u>\$91,896.16</u>	\$0.00	\$0.00	\$0.00

Fremont Public Schools
 General Fund
 School Year 2021-2022
 June 2022

FPS GENERAL FUND

Receipts:	<u>Budgeted</u>	<u>Actual Receipts</u>	<u>% Received</u>
Local Sources	2,835,000	2,354,377	83.05%
County Sources	350,000	419,577	119.88%
State Aide	16,117,771	16,117,771	100.00%
State Sources	4,244,510	6,468,337	152.39%
Federal Sources	12,859,889	3,805,605	29.59%
Personal and Property Taxes	29,283,798	26,181,900	89.41%
Cash Reserve	<u>2,782,064</u>	<u>0</u>	<u>0.00%</u>
	68,473,032	55,347,567	80.83%
Expenditures:	<u>Budgeted</u>	<u>Expenditures YTD</u>	<u>% Disbursed</u>
Regular Instruction	27,487,501	22,045,783	80.20%
Special Education	6,800,630	5,297,777	77.90%
Pupil Support Services	5,050,079	4,228,376	83.73%
Instruct Support Services	2,258,803	2,585,467	114.46%
Board of Education	365,158	397,926 *	108.97%
General Administration	1,700,513	1,278,896	75.21%
School Administration	2,180,511	1,753,727	80.43%
Business Support	1,823,130	1,302,861	71.46%
Facilities & Operations	5,730,519	4,191,361	73.14%
Regular Transportation	714,486	469,951	65.77%
Special Ed Transportation	1,116,254	954,924	85.55%
State Grants	354,359	259,140	73.13%
Debt Services (Tax Repayment)	10,000	54,677	0.00%
Federal Programs	12,859,889	3,471,917	27.00%
Summer Programs	0	16,953	0.00%
Transfers to Other Funds	<u>21,200</u>	<u>11,365</u>	<u>0.00%</u>
	68,473,032	48,321,101	70.57%

*Includes District Liability Insurance Premiums

Elementary School Activities Fund

As of June 30, 2022

	<u>Jun 30, 22</u>
ASSETS	
Current Assets	
Checking/Savings	
1000 - Checking	26,406.66
Total Checking/Savings	<u>26,406.66</u>
Total Current Assets	<u>26,406.66</u>
TOTAL ASSETS	<u>26,406.66</u>
LIABILITIES & EQUITY	
Equity	
Net Income	26,406.66
Total Equity	<u>26,406.66</u>
TOTAL LIABILITIES & EQUITY	<u>26,406.66</u>

Balance Sheet 2021-2022

June 2022

	Jun 30, 22
ASSETS	
Current Assets	
Checking/Savings	
FMS Checking	112,497.73
Investments	
MS Student Council CD	20,018.70
Total Investments	20,018.70
Total Checking/Savings	132,516.43
Other Current Assets	
12100 - Inventory Asset	251.98
Total Other Current Assets	251.98
Total Current Assets	132,768.41
TOTAL ASSETS	132,768.41
LIABILITIES & EQUITY	
Equity	
1110 - Fund Balance	-149.09
Net Income	132,917.50
Total Equity	132,768.41
TOTAL LIABILITIES & EQUITY	132,768.41

Fremont High Activities Fund
Balance Sheet
As of June 30, 2022

	<u>Jun 30, 22</u>	<u>May 31, 22</u>
ASSETS		
Current Assets		
Checking/Savings		
Checking	271,414.15	291,718.29
Total Checking/Savings	<u>271,414.15</u>	<u>291,718.29</u>
Total Current Assets	<u>271,414.15</u>	<u>291,718.29</u>
TOTAL ASSETS	<u>271,414.15</u>	<u>291,718.29</u>
LIABILITIES & EQUITY		
Equity		
Fund Balance	60.00	60.00
Net Income	271,354.15	291,658.29
Total Equity	<u>271,414.15</u>	<u>291,718.29</u>
TOTAL LIABILITIES & EQUITY	<u>271,414.15</u>	<u>291,718.29</u>

Fremont Public School Food Service

130 East Ninth Street
Fremont, Nebraska 68025
Rowan Lana, Director

Monthly Report of: June 2022

Fund Balance: 5/31/22 \$ 1,784,234.02

Income for the month of: June

1990	Other Misc Income	.....	\$	89.95
1611	School Lunch Program	.....	\$	1,510.70
1510	Interest	.....	\$	137.11
4210	Federal Reimbursement	.....	\$	271,065.37
3150	State Reimbursement	.....	
5200	Funds Transfer In	.....	
Total Monthly Income			\$	<u>272,803.13</u>

Expenditures For the month of: June

630	Food	Purchased During: May	.....	\$	93,343.96
110	Labor	May 1 through May 31	.....	\$	105,222.47
430	Repairs & Maintenance	For the Month of: May	.....	\$	7,993.85
650	Supplies & Technology	Purchased During: May	.....	
890	Misc Expenditures	Purchased During: May	.....	\$	148.93
810	Dues & Fees	Purchased During: May	.....	\$	11.35
Total Expenditures			\$	<u>206,720.56</u>	

Fund Balance: 6/30/22 \$ 1,850,316.59

Deb Nelson, Food Service Accounting Office

2021/2022 BOE Discard Request		Submitted by: Julie Muller
		Date: 6/27/2022
		Approved by:
		Date:
ITEM	QUANTITY	REASON FOR DISCARD
L-Shaped Metal Desk	1	Obsolete

BOE Discard Request		
Date: 6/30/2022		Submitted by: Milliken Park
		Approved by:
ITEM	QUANTITY	REASON FOR DISCARD
PK sized chairs	75	Obsolete
wooden/ metal media lab desks	20	Obsolete

CURRENT POLICY

Fremont Board Policy

**40A.4
53C.1b**

Grievance Procedure for Complaints of Sexual Harassment

A. Grievance Procedure - Generally

All employees are responsible for helping to prevent sexual harassment. Employees, or students, who believe they have been subjected to, or believe they have witnessed sexual harassment should follow these procedures:

1. Directly inform the person engaging in the discrimination or harassment that such conduct is offensive and must stop.
2. For employee reporters, contact your principal or supervisor or the principal or supervisor of the offending person, the Title IX Coordinator, or the Executive Director of Human Resources, if you do not wish to communicate directly with the person whose conduct is offensive or if direct communication with the offending person has been ineffective.
3. Report the matter to the Title IX Coordinator, the Executive Director of Human Resources, if the offending conduct continues or has not been resolved to your satisfaction after you have reported the matter to a principal or supervisor.
4. For student reporters, contact any teacher, counselor, or administrator.
5. Report to the Title IX Coordinator if you are the adult to whom the student has made a report so that the matter can be properly resolved. The Title IX Coordinator who may file a formal complaint and begin the following grievance procedure.

Allegations of sexual harassment or discrimination shall be investigated and if substantiated, corrective or disciplinary action taken, up to and including dismissal from employment if the offender is an employee, or suspension and/or expulsion, if the offender is a student. Retaliatory action will not be taken against an employee for reporting discrimination or harassment.

B. Response to a Formal Complaint:

1. Filing Formal Complaint: An employee or student can allege sexual harassment by filing a formal complaint in writing (using the approved form) with the Title IX Coordinator in person or by mail, or by electronic mail using the following contact information:

TITLE IX COORDINATOR CONTACT INFORMATION

Kevin Eairleywine
130 E. 9th Street
Fremont, NE 68025
kevin.eairleywine@fpsmail.org

The formal complaint must be signed by the complainant or by the Title IX Coordinator. **The following procedures apply only in the event that a formal complaint is filed. All other allegations of sexual harassment shall be resolved using the general grievance procedure outlined above.**

2. Immediate Actions Upon Receipt of Formal Complaint: Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following to all known parties of (A): The grievance procedure as outlined in this regulation; and (B): Notice of the allegations of sexual harassment including (i) the identities of the parties involved, if known, (ii) the conduct allegedly constituting sexual harassment, and (iii) the date and location of the alleged incident.

The parties to the formal complaint may select an advisor of their choice, who may be, but is not required to be an attorney.

3. Investigation of Formal Complaint: Upon receipt of a formal complaint, the Title IX Coordinator shall notify the Investigator. The Investigator will promptly investigate all complaints of discrimination, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. The Investigator will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this grievance procedure. If the allegation(s) involve possible criminal conduct, the District will notify the complainant of his or her right to file a criminal complaint, and District employees will not dissuade the complainant from filing a criminal complaint either during or after the District's investigation.

The Investigator will aim to complete its investigation within a reasonable time frame as determined by the Title IX Coordinator. The factors to determine a reasonable time frame include, but are not limited to the allegations of the formal complaint, the number of witnesses that may need to be interviewed, and whether the police are also conducting an investigation into the allegations. **The time frame originally set by the Title IX Coordinator may be extended by the Title IX Coordinator, upon notice to the parties, as he or she deems necessary to complete the investigation.** Periodic status updates will be given to the parties, when appropriate.

(A) *Neutrality:* The Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate this grievance procedure, shall not have any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The District shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates this grievance procedure shall receive training on the definition of sexual harassment in accordance with this regulation, the scope of the District's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by

avoiding prejudice of the fact at issue, conflicts of interest, and bias. The District shall ensure that the individuals involved in the grievance procedure receive training on issues of relevance of questions and evidence and on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

(B) *Burden of Production*: It shall be the Investigator's burden to gather evidence sufficient to reach a determination regarding responsibility. To reach a determination, the investigation will include, but is not limited to:

- a. Providing the parties with the opportunity to present witnesses and provide evidence.
- b. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- c. For allegations involving harassment, some of the factors the District will consider include: 1) the nature of the conduct and whether the conduct was unwelcome, 2) the surrounding circumstances, expectations, and relationships, 3) the degree to which the conduct affected one or more students' education, 4) the type, frequency, and duration of the conduct, 5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, 6) the number of individuals involved, 7) the age (and sex, if applicable) of the alleged harasser and the alleged victim(s) of the harassment, 8) the location of the incidents and the context in which they occurred, 9) the totality of the circumstances, and 10) other relevant evidence.
- d. A review of the evidence using a "preponderance of the evidence" standard (based on the evidence, is it more likely than not that discrimination, harassment, or retaliation occurred?)

(C) *Rights of the Parties*: The respondent is entitled to a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The Investigator must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The Investigator shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

The Investigator shall provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. However, the Investigator may establish restrictions regarding the extent to which the advisor may participate in the proceedings, if the restrictions apply equally to both parties.

The Investigator shall provide to all witnesses expected to attend an meeting notice of the date, time, location, participants, and purpose of all hearings within 2 days of the meeting.

Up until the conclusion of the investigation, the parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly

related to the allegations raised in the formal complaint. This includes the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence obtained from any source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

The District retains the right to place a non-student employee respondent on administrative leave during the pendency of the investigation. The District also retains the right to remove a respondent from the District's educational program prior to the conclusion of the investigation. In the event of a removal, the respondent shall have the opportunity to challenge the decision for removal.

(D) *Conclusion of Investigation:* Prior to the conclusion of the investigation, the investigator shall send each party and the party's advisor, if any, the evidence that is subject to inspection and review in an electronic format or a hard copy. The parties shall then have ten (10) days to submit a written response, which the investigator will consider.

Once the investigator has considered the written statements of the parties, if any, and any questions of the parties, if any, the investigator shall create an investigative report that fairly summarizes relevant evidence. The investigator shall then submit the written investigation report to the decision-maker. The parties shall each receive a copy of the final investigative report at the same time as the decision-maker.

4. Decision of Responsibility: The decision-maker, shall review the investigative report. Prior to coming to a determination regarding responsibility, the decision maker shall provide 10 days for each party to submit written, relevant questions that a party wants asked of any party or witness, provide each party with answers, and allow for additional, limited follow-up questions from each party.

Once the decision maker has considered the written questions of the parties, if any, the decision maker shall issue a written determination regarding responsibility by a preponderance of the evidence within a reasonable time frame as determined by the Title IX Coordinator. The decision-maker shall consider all relevant evidence, including inculpatory and exculpatory evidence, and will not consider the credibility of the evidence to be based on a person's status, such as complainant, respondent, or witness. The decision-maker shall provide the written determination to both parties simultaneously. The written determination must include:

- a. Identification of the allegations potentially constituting sexual harassment;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of each recipient's code of conduct to the facts;
- e. A statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or

preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

- f. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Sec. 11232g; 34 C.F.R. Part 99, permits the District to disclose relevant information to a student who was discriminated against or harassed.

5. Supportive Measures and Disciplinary Actions:

Throughout the investigation, either party may be entitled to supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, to deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures.

At the conclusion of the investigation, the Decision-Maker may institute disciplinary measures to the respondent if the Decision-Maker determines that the respondent engaged in sexual abuse or harassment. Disciplinary measures may include, but are not limited to, in school suspension, out of school suspension, expulsion, and in the case of an employee disciplinary action up to and including dismissal from employment. **This regulation does not limit or prohibit the District from instituting disciplinary measures if in the course of the investigation it determines that the complainant or respondent violated the student code of conduct.**

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

C. Appeals

If either party is not satisfied with the outcome of the investigation and the decision of the decision-maker, they may appeal on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of

- the matter; and
- c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against the complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.

The request for an appeal shall be in writing and submitted on the appropriate document. The appeal document shall be submitted to the Superintendent of Schools or his/her designee.

Upon notice of an appeal by either party, the Superintendent of Schools or his/her designee shall notify the other party in writing when the appeal is filed and of the appeal procedures, which apply equally to both parties.

The Superintendent of Schools or his/her designee shall give both parties a reasonable, and equal opportunity to submit a written statement in support of, or challenging the outcome.

The Superintendent of Schools or his/her designee shall review the investigative report, decision-maker's determination, and written statements of the parties and then issue a written decision describing the result of the appeal and the rationale for the result. The Superintendent of Schools or his/her designee shall provide the written decision simultaneously to both parties.

D. Informal Resolution

If a formal complaint is filed, the District may offer the complainant and respondent the opportunity to participate in an informal resolution process. The informal resolution process may take place at any time prior to reaching a determination regarding responsibility. The informal resolution process shall only take place upon:

- a. Written notice to both parties disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b. The parties' voluntary, written consent to the informal resolution process; and
- c. That the allegations of the formal complaint do not involve any allegations that an employee sexually harassed a student.

E. Record Keeping

The District will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings for a period of seven years.

Adopted: November 9, 1987

Revised: December 15, 1997

Revised: July 19, 1999

Reviewed: April 16, 2001

Revised: July 18, 2005

Revised (Replaced w/New Title, Same Policy Numbers): August 10, 2020

Policy Previous Name Sexual Harassment (Employee and Student)

PROPOSED Board Policy - Perry Law Firm Recommendations Replacing Current Policy in its Entirety

40A.4
53C.1b

Title IX – Procedure for Complaints of Sexual Harassment

A. Complaint Procedure - Generally

1. Reporting Procedures: All employees are responsible for helping to prevent sexual harassment. Employees or students who believe they have been subjected to, or believe they have witnessed sexual harassment should follow these procedures:

1. Directly inform the person engaging in the discrimination or harassment that such conduct is offensive and must stop.
2. For employee reporters, contact your principal or supervisor, the principal or supervisor of the offending person, or the Title IX Coordinator if you do not wish to communicate directly with the person whose conduct is offensive or if direct communication with the offending person has been ineffective.
3. Report the matter to the Title IX Coordinator if the offending conduct continues or has not been resolved to your satisfaction after you have reported the matter to a principal or supervisor.
4. For student reporters, contact any teacher, counselor, or administrator, or the Title IX Coordinator.
5. Report to the Title IX Coordinator if you are the adult to whom the student has made a report so that the matter can be properly resolved. The Title IX Coordinator is:

TITLE IX COORDINATOR CONTACT INFORMATION

Kevin Airleywine
130 E. 9th Street
Fremont, NE 68025
402-727-3008

Kevin.airleywine@fpsmail.org

2. District Actions upon Report of Sexual Harassment or Sexual Misconduct: Upon receipt of a report of sexual harassment, the Title IX Coordinator, or designee, including but not limited to a building principal or assistant principal, will conduct an initial inquiry. The first step of the inquiry will typically include a preliminary meeting between the individual whom the reporting party alleges has been subjected to sexual harassment or sexual misconduct and the Title IX Coordinator, or designee. The initial inquiry may also include a meeting between the Title IX Coordinator, or designee, and the individual whom the reporting party alleges has

committed sexual harassment or sexual misconduct. The purpose of these meetings is to gain a basic understanding of the nature and circumstances of the report, it is not intended to be a full investigative interview. During the initial assessment, the reporting party may also receive information about resources, rights, procedural options, and supportive measures. The Title IX Coordinator, or designee, may inquire into whether the person who is alleged to have been subject to sexual harassment or misconduct requests resources, no further action, supportive measures, and/or initiation of the “Formal Complaint” process. The Title IX Coordinator will make a reasonable effort to respect the wishes of the person who experienced sexual harassment or sexual misconduct; however, if the reported incident constitutes an imminent or ongoing threat to school safety, based on the assessment of the Title IX Coordinator, then the Title IX Coordinator may file a Formal Complaint, on behalf of the District, with or without the consent or permission of the person who has experienced sexual harassment or sexual misconduct.

With or without a Formal Complaint, allegations of sexual harassment or discrimination shall be investigated and if substantiated, corrective or disciplinary action will be taken, up to and including dismissal from employment, if the offender is an employee, or suspension and/or expulsion, if the offender is a student. Retaliatory action will not be taken against any person for reporting discrimination or harassment.

B. Formal Complaint Process

The following procedures apply only in the event that a Formal Complaint is filed. All other reports of sexual harassment shall be resolved using the general complaint procedure. Any timelines set forth in the following procedures may be extended by the Title IX Coordinator with notice to the parties.

1. Misconduct Which May Be Investigated Under a Formal Complaint: The Formal Complaint process is only available if the Formal Complaint alleges: (i) conduct which occurs on District grounds or property owned or controlled by the District; (ii) conduct which occurs in the context of District employment or an education program or District-sponsored activity within the United States, and (iii) conduct which occurs when the District has substantial control over both the Respondent and the context in which the sexual harassment or sexual misconduct occurs. The conduct must also fall within one of the following categories: (a) an employee of the District conditioning an aid, service, or benefit of the District on an individual’s participation in unwelcome sexual contact; (b) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a student equal access to the District’s education program or activity; (c) sexual assault; (d) domestic violence; (e) dating violence; or (f) stalking.

2. Parties to a Formal Complaint: The only parties to a Formal Complaint are the Complainant, who is the person alleged to have been subject to misconduct, and the Respondent, the person who is alleged to have committed the misconduct.

3. Filing a Formal Complaint: A Formal Complaint may only be filed by a Complainant or the Title IX Coordinator. An employee or student Complainant may file a Formal Complaint in writing with the Title IX Coordinator in person or by mail, or by electronic mail. The Formal Complaint must be signed by the Complainant or by the Title IX Coordinator.

4. Immediate Actions Upon Receipt of Formal Complaint: Upon receipt of a Formal Complaint, the Title IX Coordinator will conduct an initial assessment of the allegations contained within the Formal Complaint to determine if the allegations in the Formal Complaint, if true, allege misconduct which may be investigated under the Formal Complaint process. If the allegations in the Formal Complaint do not allege misconduct which may be investigated under the Formal Complaint process, the Title IX Coordinator must dismiss the Formal Complaint and may proceed under other District policies or procedures. The Complainant will be provided notice in writing if the Formal Complaint is dismissed.

If the allegations in the Formal Complaint allege misconduct which may be investigated under the Formal Complaint process, the Title IX Coordinator shall provide the following to all known parties: (1) The complaint procedure as outlined in this policy; and (2) Notice of the allegations of sexual harassment, known by the District at the time of filing the Notice, including (i) the identities of the parties involved, if known, (ii) the conduct allegedly constituting sexual harassment, and (iii) the date and location of the alleged incident.

The Title IX Coordinator shall then provide the Formal Complaint and the Notice of the Formal Complaint to the District's Title IX Investigator.

5. Investigation of Formal Complaint: Upon receipt of a Formal Complaint, the Investigator will promptly investigate the allegations contained within, even if an outside entity or law enforcement agency is investigating a complaint involving the same facts and allegations. The Investigator will not wait for the conclusion or outcome of a criminal investigation or proceeding to begin an investigation required by this complaint procedure except to avoid interfering with law enforcement. If the allegation(s) involve possible criminal conduct, the District will notify the Complainant of his or her right to file a criminal complaint, and District employees will not dissuade the Complainant from filing a criminal complaint either during or after the District's investigation.

The Investigator will contact the Complainant, Respondent, and relevant witnesses to schedule interviews. All parties may bring up to two people to this meeting: (1) Support Person and/or (2) Advisor of Choice. The Advisor of Choice may or may not be an attorney. Neither the Support Person nor the Advisor of Choice can direct questions or comments to the Investigator, nor may the Support Person or Advisor of Choice advise a student or employee how to answer the Investigator's questions.

The Investigator will also aim to collect all tangible evidence relevant to the investigation.

The Investigator will complete the investigation within a reasonable time frame, as determined by the Title IX Coordinator. The factors to determine a reasonable time frame include, but are not limited to, the allegations of the Formal Complaint and the number of witnesses that may

need to be interviewed. The time frame originally set by the Title IX Coordinator may be extended by the Title IX Coordinator, upon notice to the parties, as deemed necessary to complete the investigation. Periodic status updates will be given to the parties, when appropriate.

(A) *Neutrality*: The Title IX Coordinator, Investigator, Decision-Maker, or any person designated by the District to facilitate this Formal Complaint process, shall not have any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The District shall ensure that Title IX Coordinator, Investigator, Decision-Maker, and any person who facilitates this Formal Complaint process shall receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the fact at issue, conflicts of interest, and bias.

(B) *Burden of Production*: It shall be the Investigator's burden to gather evidence sufficient to reach a determination regarding the outcome of the Formal Complaint. To reach a determination, the investigation will include, but is not limited to:

- i. Providing the parties with the opportunity to present witnesses and provide evidence.
- ii. An evaluation of all relevant information and documentation relating to the alleged discriminatory conduct.
- iii. A consideration of various factors, including: (1) the nature of the conduct and whether the conduct was unwelcome, (2) the surrounding circumstances, expectations, and relationships, (3) the degree to which the conduct affected one or more students' education, (4) the type, frequency, and duration of the conduct, (5) the identity of and relationship between the alleged harasser and the suspect or suspects of the harassment, (6) the number of individuals involved, (7) the age and sex, if applicable, of the alleged harasser and the alleged victim(s) of the harassment, (8) the location of the incidents and the context in which they occurred, (9) the totality of the circumstances, and (10) other relevant evidence.
- iv. A review of the evidence using a "preponderance of the evidence" standard. To meet the "preponderance of the evidence" standard, the evidence must show that the discrimination, harassment, or retaliation more likely occurred than did not occur.

(C) *Rights of the Parties*: The Respondent is entitled to a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process. The Investigator must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The Investigator shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

The District retains the right to place any person on administrative leave during the pendency of the investigation. The District also retains the right to remove a Respondent from

the District's educational program prior to the conclusion of the investigation on an emergency basis, provided the District determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies the removal. In the event of a removal, the Respondent shall have the opportunity to challenge the decision for removal according to district policy. This provision does not limit any individual rights under IDEA, Section 504 of the Rehabilitation Act, or ADA.

(D) *Conclusion of Investigation:* Prior to the conclusion of the investigation, the Investigator shall send each party the evidence that is subject to inspection and review in an electronic format or a hard copy. This information shall be known as the "Draft Investigative Report." The Draft Investigative Report shall include all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the Investigator does not intend to rely to the Decision-Maker. The parties shall then have ten (10) calendar days to submit a written response, which the Investigator will consider. Responses may not be submitted by the parties' Advisor of Choice or Support Person, unless such person is the parent or guardian of the Complainant or Respondent. Responses may include corrections to the Investigator's summary of the parties' interviews, suggestions for additional investigation, or additional information not known at the time of the interviews. Any new information provided by the parties during the response period will not result in an additional time period for response by the other party unless determined necessary by the Title IX Coordinator. The Investigator is not obliged to respond to any question or requests for information in the parties' responses. The Investigator will consider the information provided by the parties and will incorporate relevant information into the Final Investigative Report. The Final Investigative Report will fairly summarize the relevant evidence. The Investigator shall then submit the Final Investigation Report to the Decision-Maker. The parties shall each receive a copy of the Final Investigative Report at the same time as the Decision-Maker.

6. Actions Taken By Decision-Maker Upon Receipt of Final Investigative Report: Upon receipt of the Final Investigative Report, the Decision-Maker shall provide 10 days for each party to submit written, relevant questions that a party wants asked of any party or witness. Questions shall be submitted to the Decision-Maker who shall determine whether questions are relevant. The Decision-Maker shall contact parties or witnesses to request answers to the parties' relevant questions. The Decision-Maker will provide each party with the answers provided by the opposing party or witness and allow for additional, limited follow-up questions from each party.

7. Notice of Determination: Once the Decision-Maker has received the answers to relevant questions submitted by the parties, the Decision-Maker shall consider the answers and the Decision-Maker shall issue a written determination regarding responsibility by a preponderance of the evidence within a reasonable time frame, as determined by the Title IX Coordinator. The Decision-Maker shall consider all relevant evidence, including inculpatory and exculpatory evidence, and will not consider the credibility of the evidence to be based on a person's status, such as the Complainant, Respondent, or witness. The Decision-Maker shall provide the written determination to both parties simultaneously. The written determination shall include:

- (a) Identification of the allegations potentially constituting sexual harassment;
- (b) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;
- (c) Findings of fact supporting the determination;
- (d) Conclusions regarding the application of each recipient's code of conduct to the facts;
- (e) A statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
- (f) The recipient's procedures and permissible bases for the Complainant and Respondent to appeal.

The Family Educational Rights and Privacy Act (FERPA) permits the District to disclose relevant information to a student who was discriminated against or harassed.

8. Sanctions: At the conclusion of the investigation, the Decision-Maker may institute disciplinary measures against the Respondent if the Decision-Maker determines that the Respondent engaged in sexual abuse or harassment. Disciplinary measures may include, but are not limited to, in-school suspension, out-of-school suspension, expulsion, and, in the case of an employee disciplinary action, up to and including immediate termination from employment.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures for the victim(s).

C. Appeals

If either party is not satisfied with the outcome of the investigation and the decision of the Decision-Maker, they may appeal on the following bases – within 10 days of receiving the written determination:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against the Complainant or Respondent generally or the individual Complainant or Respondent that affected the outcome of the matter.

The request for an appeal shall be in writing and submitted on the appropriate document. The appeal document shall be submitted to the Superintendent, or designee.

Upon notice of an appeal by either party, the Superintendent of Schools, or designee, shall notify the other party in writing when the appeal is filed and of the appeal procedures, which apply equally to both parties.

The Superintendent, or designee, shall give both parties a reasonable and equal opportunity to submit a written statement in support of or challenging the outcome.

The Superintendent, or designee, shall review the investigative report, Decision-Maker's determination, and written statements of the parties and then issue a written decision describing the result of the appeal and the rationale for the result. The Superintendent, or designee, shall provide the written decision simultaneously to both parties.

D. Informal Resolution

If a Formal Complaint is filed, the District may offer the Complainant and Respondent the opportunity to participate in an informal resolution process. The informal resolution process may take place at any time prior to reaching a determination regarding responsibility. The informal resolution process shall only take place upon:

1. Written notice to both parties disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the resolution process and resume the complaint process with respect to the Formal Complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. The parties' voluntary, written consent to the informal resolution process; and
3. That the allegations of the Formal Complaint do not involve any allegations that an employee sexually harassed a student.

E. Record Keeping

The District will maintain relevant documentation obtained during the investigation and documentation supportive of the findings and any subsequent determinations, including the investigative report, witness statements, interview summaries, and any transcripts or audio recordings, pertaining to the investigative and appeal proceedings for a period of seven (7) years.

Adopted: November 9, 1987

Revised: December 15, 1997

Revised: July 19, 1999

Reviewed: April 16, 2001

Revised: July 18, 2005

Revised (Replaced w/New Title, same Policy Number): August 10, 2020
Policy Previous Name – Sexual Harassment (Employee and Student)

Revised: July 11, 2022

Elementary Handbook

Changes for 2022/2023

- ❖ Dates, names, titles and page numbers will be updated accordingly as will any referenced BOE Policies as previously approved by the Board of Education.

- ❖ Added under **School Day - SCHOOL HOURS**

PreK AM 7:50 - 10:50

PM 11:30 - 2:30

- ❖ Added a new section under **School Day:**

Recess

Recess time is provide to students for short periods of time daily. Outside recess is preferred, but on occasion, the school will need to limit outside activities due to weather conditions.

- Should a Heat Advisory be issued by the National Weather Service, outside time (cut in half) and intensity of activities will be reduced and appropriate hydration will be provided. Should an Excessive Heat Warning be issued by the National Weather Service, recess will be limited to inside activities.
- Should the “feels like” temperature (including windchill) be below 15 degrees inside recess will be held. It is possible that a short outside walk around for those with appropriate dress will be used to give students a little outside time (approximately 5 minutes).
- Rain or heavy snow will also prompt inside recess
- Naturally, any child with health issues may remain inside per parent instructions.

- ❖ Changed under **Preschool Information - APPLICATION:**

Preschool applications can be completed at each school site in February of each year. Families will be notified regarding acceptance of their application in June. Preschool application registrations can be completed online year round. Please visit our Fremont Public Schools website to submit your information. Families will be notified regarding acceptance of their application during the summer.

**JOHNSON CROSSING ACADEMIC CENTER
STUDENT-PARENT HANDBOOK CHANGES FOR 2022-2023**

1. Changed dates on first page of handbook
2. Updated **TABLE OF CONTENTS**
3. Updated **SCHOOL CALENDAR** on Page 2
4. Updated dates on **CERTIFICATION** on Page 27
5. Updated dates on **CHROMEBOOK TERMS OF USE AGREEMENT** on Page 53-54
6. Updated dates on **JOHNSON CROSSING ACADEMIC CENTER STUDENT-PARENT HANDBOOK ACKNOWLEDGMENT** on Page 55

Fremont Middle School Student Handbook

Changes for 2022-2023

1. Changed/Updated the first page of the handbook, **and TABLE OF CONTENTS.**
2. Changed/Updated Message from the Principal (Page 1)
3. Changed/Updated ADMINISTRATION AND GUIDANCE. (Page 1)
4. Changed/Updated **DAILY SCHEDULE, SCHOOL CALENDAR** -. (Page 2)
5. Changed/Updated Unexpected Absence to Parents should report the absent by calling 402-727-3100 ~~between 7:30 a.m. and noon~~ **to avoid an "unverified" absence.**
6. Added under SMOKING **vapes.** (Page 7)
7. Changed/Updated **VI. STUDENT CONDUCT – TIERED SYSTEM OF SUPPORT** – (Page 7)
8. Deleted sentence in Office Detentions from ~~After school office detentions are held Tuesday and Thursday from 3:35 to 5:00 p.m. to~~ **After school detentions last until 4:30 or 5:00 p.m.** (Page 17)
9. Changed/Updated VII GRADING ~~Students in grades 7th and 8th will be required to earn~~ **FMS students in good standing must earn fifty (50) credits each year to be** considered **academically ready to move** ~~for promotion~~ from one.... (Page 19)
10. Changed/Updated FMS GRADING POLICIES 6. ~~Behavior will be reported in each class~~ **How a child is doing toward meeting behavior expectations will be reported 2 times per year at Parent/Teacher conferences** using a 4-1 scale. (Page 19)
11. Changed/Updated ELL PROGRAM to EL PROGRAM (Page 21)

Changed items are highlighted in **yellow**. Deleted items are ~~strike through~~.

Fremont High School

Student-Parent Handbook Changes

2022 – 2023

1. Updated the **FHS Activities Calendar** with the activities for 2022-2023.
2. Updated the **Academic Honors** information to coincide with the new graduation requirements and leveled diplomas.
3. Updated the **Student Fees** section of the handbook to match the updated wording and cost in the board policy.
4. Deleted the **Check Out Sheets** section as this is a practice that is no longer used at FHS.
5. Updated the **Late Arrivals** section by changing the time listed to 7:50 a.m.
6. Changed and updated language in the **Dress Code** section regarding bandanas, shorts, skirts, and inappropriate working/pictures.
7. Updated the **Family Connection Nights** to include 2022-2023 dates.
8. Updated the **Graduation Requirements** to match the new/current board policy.
9. Updated the **Honors Awarded by the Faculty** section to agree with the names of the awards currently used by the faculty (Honor Key, All-Around Student, Best Citizen).
10. Updated the **Publications** section with new information about the yearbook being distributed at the end of the school year.
11. Updated the **Student Announcements for the Daily Bulletin** information to reflect the announcements being read over the PA system at the beginning of 2nd block each day. (p.
12. Updated the **Student IDs** section to include where the use of IDs is required in the building/during the school year.
13. Added Gaming Club (esports) to the **Clubs and Organizations Schedules** section.
14. Updated the **High School (waiver option)** section to include information/the cost regarding Non-FPS Resident Host Family Foreign Exchange Student Tuition fee.
15. Updated the **High School Admission Fees** section to reflect the new admission prices to events.

Learning Center Handbook Updates 2022-23

- +new approved student calendar
- +changes in graduation requirements & leveled diploma
- schedule modification (temp): removed large-group bathroom breaks while using East Meeting Room. Will use digital pass like FHS if we can. We will alarm and transition according to cells next year.
- no headwear that covers ears will be permitted (hoodies, beanie, etc. Baseball caps are fine) wording addition to dress code
- +add back in Love and Logic wording that promotes self responsibility and logical consequences
- +Overtime wording for extra student support to meet goals

General Reminder - Learning Center students also receive and agree to all FHS Handbook policies (inclusive to Board Policy updates).



FREMONT ACTIVITIES DEPARTMENT

1750 North Lincoln Avenue
Fremont, NE 68025
402-727-3050
(fx) 402-727-3033

Date: 7/1/2022

To: Mr. Shepard and FPS Board of Education Members

From: Scott Anderson, Assistant Principal/Activities Director

Re: Cooperative Sponsorship Agreement

I am seeking your approval to renew the cooperative sponsorship agreement between Fremont High School and Archbishop Bergan High School for the following sports:

- Girls and Boys Bowling

The NSAA requires cooperative agreements to be renewed by both schools every two years. This renewal will cover bowling for the 2022-2023 & 2023-2024 school years.



Fremont High School
1750 North Lincoln Avenue
FREMONT, NEBRASKA
68025

Scott Anderson
Assistant Principal/Activities Director
Phone (402) 727-3969
AD Fax (402) 727-3977
Anderson.Scott@fpsmail.org

Mike Schleicher
Assistant Activities Director
Phone (402) 727-3965
AD Fax (402) 727-3977
Michael.schleicher@fpsmail.org

Date: July 1, 2022
To: Mr. Mark Shepard and Fremont Board of Education
From: Scott Anderson
RE: Early Dismissal Requests 2022-23 School Year

On behalf of Fremont High School, I would like to request the following early dismissals for activities to be held at our school during the 2022-23 school year. These are regularly scheduled events and any additional requests for 2022-23 will be for events that are assigned at a later date by the NSAA. Dates requested, and dates and times for dismissal are as follows:

**Fri. 12/2/22 John McMullen Wrestling Invitational 1:30 PM Start/Dismiss @ 12:00 PM
(Lunch served)**

**Fri. 1/20/23 FHS Speech Tourney 3:00 PM Start/Dismiss @ 1:30 PM
(Lunch Served)**

**Fri. 4/14/23 Pat Murphy Track & Field Invite 12:30 PM Start/Dismiss @ 12:00 PM
(Lunch Served)**

*For all events, staff members would remain in school or work at the event

These early dismissals will allow for our students to clear the building prior to the events beginning, as well as free parking space for the participating teams and spectators. Early dismissals for track meets are necessary due to lack of lights at our facility as well as the need for HS staff to help run off events. .

Thank you for your consideration of these requests, and I look forward to the School Board's action on these requests.

Certified Employee Handbook

Changes for 2022/2023

- ❖ Dates, names, titles and page numbers will be updated accordingly as will any referenced BOE Policies as previously approved by the Board of Education.

- ❖ **Changed under Annual Letter Communication to Parents and Public:**

~~Annual Letter Communication to Parents and Public~~

~~Each year a letter information to the public is published in our local newspaper that contains information about our school system procedures and daily schedules.~~

Annual Communication to Parents and the Public

FPS will distribute the Tiger Bytes publication to all addresses in Fremont. This will contain a variety of information about our schools including required official notices.

- ❖ Deleted the following as it is covered under Emergency Drills:

~~Civil Defense and Disaster Alarms~~

~~Civil Defense has installed rotating sirens located throughout the city for disaster warnings. The sirens are tested the first Wednesday of each month. In case of tornado or similar severe weather warning, a long, steady wail means to take cover.~~

~~The Fremont Board of Education grants discretionary authority to the administrators to determine procedures. Building principals will develop plans for the disaster procedures.~~

~~Any person perpetrating or participating in any form of a bomb scare or false alarm will be subject to immediate dismissal. Such action will be recorded in the individual's permanent record and shall be subject to such criminal charges as city codes and state statutes may designate.~~

- ❖ Adjusted the section on Dress:

~~Denim jeans are not appropriate attire on regular teaching days (days with students in the building) unless for a special event and announced by administration (e.g. Spirit Days, Love Public Schools Days). Jeans would be considered appropriate attire on these non-teaching work days and the last~~

student day of each week and special events as announced by the Administration.

- ❖ Under Emergency Drills, we added the following:

Other emergency drills (severe weather, intruder, evacuation, etc.) will be practiced throughout the year at the direction of Administration and under the supervision of the FPS Safety/Security Coordinator.

- ❖ Under Payroll Records, we replaced “school day” with “business day” to better reflect when payroll checks are issued:

All employees are paid on the 20th of the calendar month or on the first ~~school~~ business day preceding the 20th.

- ❖ Under Professional Growth, we updated the information to reflect current practice:

Every five years each certificated employee must complete ~~90~~ 60 professional growth points in order to maintain employment, which can be met through active engagement in the District provided Professional Growth activities.

~~Upon completion of each professional growth activity, the certificated employee must record the activity on the professional growth form. This form is to be submitted to the Main Street Education and Administration Center (addressed to the attention of Deb Horrocks). Verification of activity (attendance, grade slips, etc.) must be attached to the form.~~

Professional Growth Activities / Opportunities include:

College Course - Graduate Level including Tiger U => 10 points per credit

Attend a Full Day PLC / PD Days = 2 points

Attend a Half Day PLC / PD Days = 1 point

Any teacher who attends all PLC / PD Days would meet / exceed the required point total.

~~Contact the Human Resources Office for the necessary forms and guidelines.~~

Classified Employee Handbook

Changes for 2022/2023

- ❖ Dates, names, titles and page numbers will be updated accordingly as will any referenced BOE Policies as previously approved by the Board of Education.

- ❖ The **PAYROLL DEDUCTION** section was renamed **PAYROLL**

- ❖ Under **Payroll Records**, we replaced “school day” with “business day” to better reflect when payroll checks are issued:

All employees are paid on the 20th of the calendar month or on the first ~~school~~ business day preceding the 20th.

- ❖ Under **Health Insurance**, we made the following change to reflect Federal requirements:

. . . the District will pay the difference between the cost of this coverage and the ~~9.5%~~ 9.61% of the employee’s budgeted annual pay.

- ❖ Under **Sick Leave**, we increased the amount to be paid for unused sick leave as follows:

After the 5th 15th year of continuous, uninterrupted employment with FPS (starting the 6th 16th year with September 1 as the beginning of the year date), any classified employee who leaves the FPS workforce through voluntary resignation or retirement will be paid up to ~~\$40~~ \$100 per day for any unused sick leave days. The dollar amount paid is based on an eight-hour day, and will be calculated according to hours actually worked.

❖ Under **Holidays**, we changed “10 ½ month ~~office associates~~” to “10 ½ month Classified Employees” to match current practices.

❖ Under **Leave Without Pay**, we clarified language as follows:

You present to your supervisor your reason ~~on the approved “Leave Request” form~~ through submitting your request in Time Clock Plus.

Substitute Teacher Handbook

Changes for 2022/2023

- ❖ Dates, names, titles and page numbers will be updated accordingly as will any referenced BOE Policies as previously approved by the Board of Education.

- ❖ Under Certification, the information was simplified to keep it up to date with the Nebraska Department of Education:

*FPS does utilize the services of individuals with **Local Substitute Teaching Certificates** per Nebraska Department of Education requirements, as approved by the District **on a case-by-case basis**. ~~Individuals wishing to be considered for this special certificate must present evidence of the following:~~

- ~~● Completion of 60 semester credit hours of college coursework~~
- ~~● Completion of a Professional Education Course~~
- ~~● Completion of the Human Relations Training requirement through NDE~~
- ~~● Written request from the Superintendent for issuance of the certificate for FPS~~

- ❖ Under Payroll Procedures for Substitute Teachers, the daily rate for long term subbing was updated:

~~\$201.98~~ \$207.65

BVH ARCHITECTURE

DATE: 7/5/2022

PROJECT: FPS FHS Bahe Gymnasium Bleacher Replacement
PROJECT #: 21074

SUBJECT: Bid Results

TO: Brad Dahl, Associate Superintendent

Mr Brad Dahl,

BVH has reviewed the three bids received and recommends awarding the project to Carroll Seating Co. as the low responsible bidder. Please note that there were no bid alternates included in the project scope.

Low Bid: \$358,355.47

Let us know if you have any further questions.

Sincerely,
BVH Architecture

A handwritten signature in black ink that reads "Kelley Rosburg". The signature is written in a cursive, flowing style.

Kelley Rosburg AIA, CSI
Senior Associate

BVH ARCHITECTURE

BID TABULATION

FHS Bahe Gymnasium – Bleacher Replacement
 BVH #21074
 30 June @ 2:30 p.m.

CONTRACTORS	BID BOND	ADDENDA	BASE BID	NOTES
Heartland Seating Inc	Yes	1 & 2	\$358,739.00	
Mid States School Equipment	Yes	1 & 2	\$376,515.00	ADD \$9,413.00 to bid for Performance Bond
Carroll Seating Co.	Yes	1	\$358,355.47	Follow-up letter acknowledging ADDN #2 attached



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 July in the year 2022
(In words, indicate day, month and year.)

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

Fremont Public Schools
2021 Bond Program

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

Fremont Public Schools, a/k/a Dodge County School District 27-0001
130 E. 9th Street
Fremont, NE 68025

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

Hausmann Construction, Inc.
8885 Executive Woods Drive
Lincoln, NE 68512

TABLE OF ARTICLES

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

ARTICLE B.1 GENERAL

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

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

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

ADDITIONS AND DELETIONS:

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

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

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

§ B.2.2 Liability Insurance

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

§ B.2.3 Required Property Insurance

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

§ B.2.3.1.1 **Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, theft, vandalism, malicious mischief, or windstorm.

(Paragraphs deleted)

(Table deleted)

§ B.2.3.1.2

(Paragraphs deleted)

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

(Table deleted)

(Paragraph deleted)

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

(Paragraphs deleted)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 **Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner that evidence compliance with the requirements in this Article B.3 at the following times: (1) within thirty (30) days of execution of the Agreement; (2) prior to commencement of the Work; (3) upon renewal or replacement of each required policy of insurance; and (4) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability, Automobile Liability, and excess or umbrella liability policy or policies. The Owner's acceptance of the Construction Manager's certificates of insurance does not relieve any of the Construction Manager's responsibilities under the Agreement and shall not constitute a waiver of the Construction Manager's obligations to provide insurance as required by the Agreement and this Exhibit. The Owner has the right to receive copies of any of the Construction Manager's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ B.3.1.2 **Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Construction Manager, and such large deductible or self-insured retention is subject to the Owner's written approval. The Owner has the right to require a proper form of collateral for any such large deductible or self-insured retention.

§ B.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General liability and Automobile Liability, including without limitation the insurance required by Sections B.3.2.2, B.3.2.3, and B.3.2.6, to include the Owner for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured

Init.

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User Notes:

(1836733521)

coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The Owner shall continue as an additional insured, upon the terms herein, for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct.

To be clear, the Construction Manager shall NOT include the Owner as an additional insured on the Professional Liability insurance coverage required by Section B.3.2.8, if applicable, or the Pollution Liability Coverage required by Section B.3.2.9, if applicable, to the extent that such policy(ies) include an so-called "insured-versus-insured" exclusion.

§ B.3.1.4 Notice of Cancellation or Non-Renewal

The Construction Manager (or its insurance carrier(s)) must provide written notice to the Owner no less than thirty (30) days prior to any cancellation or non-renewal of the Construction Manager's insurance. Within three (3) business days of the date the Construction Manager becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section B.3, the Construction Manager shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Construction Manager, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right (but not the obligation) to suspend the services until the lapse in coverage has been cured by the procurement of replacement coverage by the Construction Manager. The furnishing of notice by the Construction Manager shall not relieve the Construction Manager of any contractual obligation to provide any required coverage.

§ B.3.1.5 Among other grounds to withhold payment, the Construction Manager's failure to fully comply with all insurance requirements in this Section B.3 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Construction Manager. The Owner has the right, but not necessarily the obligation, to declare the Construction Manager's failure to fully comply with the insurance requirements in this Section B.3 a material breach of the Construction Manager's obligations under this Agreement.

§ B.3.1.6 All of the coverage limits stated in this Section B.3 are minimum insurance limits and shall not be construed in any way to limit the liability of the Construction Manager.

§ B.3.1.7 The Construction Manager's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- IX . The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

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

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage no less broad than the ISO CG 00 01 coverage form for claims including, without limitation,

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

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

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 The Construction Manager's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 Any aggregate limit under the Construction Manager's General Liability insurance shall, by endorsement, apply to this Project separately.

§ B.3.2.3 Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Millions Dollars (\$1,000,000) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. On behalf of itself and its automobile liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.5 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. On behalf of itself and its employers' liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.6 Commercial Umbrella/Excess Liability Insurance with limits of at least Four Million Dollars (\$4,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Five Million Dollars (\$5,000,000) per occurrence. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections B.3.2.2.1, B.3.2.3, and B.3.2.5 and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. On behalf of itself and its commercial umbrella/excess liability

insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

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

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. The coverage required in this section shall be maintained for at least ten (10) years following termination of the Agreement or the date of Substantial Completion, whichever is later.

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

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate.

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

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.3 Subcontractor's Insurance Coverage

The Construction Manager agrees to require Subcontractors to comply with the insurance provisions required of the Construction Manager pursuant to this Agreement unless the Construction Manager and Owner mutually agree in writing to modify these requirements for Subcontractors whose work is of relatively small scope, provided however that each Subcontractor shall not be required to obtain Commercial Umbrella/Excess Liability Insurance.

The Construction Manager agrees that it will contractually obligate its Subcontractors to advise the Construction Manager promptly of any changes or lapses of the requisite insurance coverages and the Construction Manager agrees to promptly advise Owner of any such notices that the Construction Manager receives from its Subcontractors. The Construction Manager agrees that it will contractually obligate its Subcontractors to indemnify and hold harmless Owner to the same extent that Construction Manager is required to do so as provided in this Agreement. The Construction Manager assumes all responsibility for monitoring Subcontractor contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

(Paragraphs deleted)

§ B.3.4 Performance Bond and Payment Bond

§ B.3.4.1 To secure the faithful performance of the work, the Construction Manager will provide a performance bond with a penal sum no less than 100% of the GMP through a corporate surety company. The terms of the performance bond shall be substantially identical to those in the attached AIA A312-2010 Performance Bond as amended by the Owner.

§ B.3.4.2 To secure all of the Construction Manager's payment obligations that arise on the project, the Construction Manager will provide a payment bond with a penal sum no less than 100% of the GMP through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the performance of the Contract. The terms of the payment bond shall be substantially identical to those in the attached AIA A312-2010 Payment Bond as amended by the Owner and in compliance with NEB. REV. STAT. §§ 52-118 to 118.02.

§ B.3.4.3 The corporate surety or sureties issuing the required performance bond and payment bond must be lawfully authorized to issue insurance in the jurisdiction where the Project is located and must have an A.M. Best rating of not less than A- IX.

§ B.3.4.4 The cost of the performance bond and payment bond shall be included in the Cost of the Work.

(Table deleted)

§ B.3.4.5 The Construction Manager shall deliver the required bonds to the Owner within one week of the Construction Manager's execution of the Agreement and the GMP, whichever is later.

§ B.3.4.6 The Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

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

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

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 10:13:44 CT on 07/05/2022.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the _____ day of July in the year 2022

...

Fremont Public Schools
2021 Bond Program

...

Fremont Public Schools, a/k/a Dodge County School District 27-0001
130 E. 9th Street
Fremont, NE 68025

...

Hausmann Construction, Inc.
8885 Executive Woods Drive
Lincoln, NE 68512

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

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

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

Cause of Loss

Sub-Limit

~~§ B.2.3.1.2 Specific Required Coverages.~~ The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: *(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)* Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

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

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

~~§ B.2.3.3 Insurance for Existing Structures~~

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

~~§ B.2.4 Optional Extended Property Insurance.~~

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

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

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

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

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

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

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

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

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

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

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

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

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

Coverage

Limits

...

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner ~~evidencing that evidence~~ compliance with the requirements in this Article B.3 at the following times: (1) within thirty (30) days of execution of the Agreement; (2) prior to commencement of the Work; (2)-(3) upon renewal or replacement of each required policy of insurance; and (3)-(4) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show

the Owner as an additional insured on the Construction Manager's Commercial General ~~Liability~~ Liability, Automobile Liability, and excess or umbrella liability policy or policies. The Owner's acceptance of the Construction Manager's certificates of insurance does not relieve any of the Construction Manager's responsibilities under the Agreement and shall not constitute a waiver of the Construction Manager's obligations to provide insurance as required by the Agreement and this Exhibit. The Owner has the right to receive copies of any of the Construction Manager's insurance policies (including without limitation declaration pages, policy forms, and all endorsements) upon written request.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured large deductible (at least \$10,000) or self-insured retentions applicable to any insurance required to be provided by the Construction Manager, and such large deductible or self-insured retention is subject to the Owner's written approval. The Owner has the right to require a proper form of collateral for any such large deductible or self-insured retention.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured primary and excess or umbrella policies for Commercial General liability and Automobile Liability, including without limitation the insurance required by Sections B.3.2.2, B.3.2.3, and B.3.2.6, to include the Owner for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Owner shall continue as an additional insured, upon the terms herein, for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct.

To be clear, the Construction Manager shall NOT include the Owner as an additional insured on the Professional Liability insurance coverage required by Section B.3.2.8, if applicable, or the Pollution Liability Coverage required by Section B.3.2.9, if applicable, to the extent that such policy(ies) include an so-called "insured-versus-insured" exclusion.

§ B.3.1.4 Notice of Cancellation or Non-Renewal

The Construction Manager (or its insurance carrier(s)) must provide written notice to the Owner no less than thirty (30) days prior to any cancellation or non-renewal of the Construction Manager's insurance. Within three (3) business days of the date the Construction Manager becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section B.3, the Construction Manager shall provide written notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Construction Manager, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right (but not the obligation) to suspend the services until the lapse in coverage has been cured by the procurement of replacement coverage by the Construction Manager. The furnishing of notice by the Construction Manager shall not relieve the Construction Manager of any contractual obligation to provide any required coverage.

§ B.3.1.5 Among other grounds to withhold payment, the Construction Manager's failure to fully comply with all insurance requirements in this Section B.3 provides the Owner sufficient grounds to withhold some or all payments otherwise due the Construction Manager. The Owner has the right, but not necessarily the obligation, to declare the Construction Manager's failure to fully comply with the insurance requirements in this Section B.3 a material breach of the Construction Manager's obligations under this Agreement.

§ B.3.1.6 All of the coverage limits stated in this Section B.3 are minimum insurance limits and shall not be construed in any way to limit the liability of the Construction Manager.

§ B.3.1.7 The Construction Manager's insurance, whether or not specified above, shall be primary to any insurance maintained by the Owner.

PAGE 3

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located~~-located and such insurance company or insurance companies shall have an A.M. Best rating of not less than A- IX . The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$) each occurrence, (\$) general aggregate, and (\$) One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including no less broad than the ISO CG 00 01 coverage form for claims including, without limitation,~~

PAGE 4

§ B.3.2.2.3 The Construction Manager's completed operations coverage shall be maintained for the period of time the Owner may be held legally liable for the Construction Manager's services, work, or conduct. On behalf of itself and its commercial general liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.2.4 Any aggregate limit under the Construction Manager's General Liability insurance shall, by endorsement, apply to this Project separately.

§ B.3.2.3 Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than ~~(\$) per accident, One Millions Dollars (\$1,000,000) combined single limit~~ for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. On behalf of itself and its automobile liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Workers' Compensation at statutory limits. On behalf of itself and its workers compensation insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.5 Workers' Compensation at statutory limits. Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. On behalf of itself and its employers' liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

§ B.3.2.6 Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$) policy limit.~~ Commercial Umbrella/Excess Liability Insurance with limits of at least Four Million Dollars (\$4,000,000) in excess of Commercial General Liability, Automobile Liability, and Employers' Liability insurance limits such that the total limits of liability of each underlying policy together with the limit of the Commercial Umbrella/Excess Liability policy is no less than Five Million Dollars (\$5,000,000) per occurrence. Coverage under the Commercial Umbrella/Excess Liability policy shall result in the in the same or greater coverage as those required under Sections B.3.2.2.1, B.3.2.3, and B.3.2.5 and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. On behalf of itself and its commercial umbrella/excess

liability insurer, the Construction Manager waives subrogation in favor of the Owner; and further the Construction Manager shall cause such waiver of subrogation provision to be included in its commercial insurance policies to memorialize the same.

PAGE 5

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate. One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. The coverage required in this section shall be maintained for at least ten (10) years following termination of the Agreement or the date of Substantial Completion, whichever is later.

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

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) Two Million Dollars (\$2,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate.

...

§ B.3.3 Construction Manager's Other Insurance Coverage ~~Subcontractor's Insurance Coverage~~

The Construction Manager agrees to require Subcontractors to comply with the insurance provisions required of the Construction Manager pursuant to this Agreement unless the Construction Manager and Owner mutually agree in writing to modify these requirements for Subcontractors whose work is of relatively small scope, provided however that each Subcontractor shall not be required to obtain Commercial Umbrella/Excess Liability Insurance.

The Construction Manager agrees that it will contractually obligate its Subcontractors to advise the Construction Manager promptly of any changes or lapses of the requisite insurance coverages and the Construction Manager agrees to promptly advise Owner of any such notices that the Construction Manager receives from its Subcontractors. The Construction Manager agrees that it will contractually obligate its Subcontractors to indemnify and hold harmless Owner to the same extent that Construction Manager is required to do so as provided in this Agreement. The Construction Manager assumes all responsibility for monitoring Subcontractor contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

§ B.3.3.1 ~~Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:~~
(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

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

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

§ B.3.3.2.1 ~~Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the~~

insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.

Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

~~§ B.3.3.2.2 Railroad Protective Liability Insurance~~, with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate, for Work within fifty (50) feet of railroad property.

~~§ B.3.3.2.3 Asbestos Abatement Liability Insurance~~, with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

~~§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.~~

~~§ B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.~~

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

Coverage

Limits

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

§ B.3.4.1 To secure the faithful performance of the work, the Construction Manager will provide a performance bond with a penal sum no less than 100% of the GMP through a corporate surety company. The terms of the performance bond shall be substantially identical to those in the attached AIA A312-2010 Performance Bond as amended by the Owner.

§ B.3.4.2 To secure all of the Construction Manager's payment obligations that arise on the project, the Construction Manager will provide a payment bond with a penal sum no less than 100% of the GMP through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the performance of the Contract. The terms of the payment bond shall be substantially identical to those in the attached AIA A312-2010 Payment Bond as amended by the Owner and in compliance with NEB. REV. STAT. §§ 52-118 to 118.02.

§ B.3.4.3 The corporate surety or sureties issuing the required performance bond and payment bond must be lawfully authorized to issue insurance in the jurisdiction where the Project is located and must have an A.M. Best rating of not less than A- IX.

(Specify type and penal sum of bonds.) § B.3.4.4 The cost of the performance bond and payment bond shall be included in the Cost of the Work.

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

§ B.3.4.5 The Construction Manager shall deliver the required bonds to the Owner within one week of the Construction Manager's execution of the Agreement and the GMP, whichever is later.

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

§ B.3.4.6 The Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.



 **AIA[®] Document 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 July in the year 2022
(In words, indicate day, month, and year.)

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

Fremont Public Schools, a/k/a Dodge County School District 27-0001
130 E. 9th Street
Fremont, NE 68025

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

Hausmann Construction, Inc.
8885 Executive Woods Drive
Lincoln, NE 68512

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

Fremont Public Schools
2021 Bond Program

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

BVH Architecture
440 N 8 St Ste 100
Lincoln NE 68508
402-475-4551

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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User Notes:

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TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A	GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B	INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

TBD

§ 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.)

- (1) Geothermal well field, track and field upgrades
- (2) Indoor Air Quality improvements to the existing campus to the extents shown in the attached plan (BVH to provide attachment).
- (3) Northwest addition to extend the existing commons and create an athletic directors office suite.

Init.

(4) Demolition of the existing CTE/'old shop' spaces to create a new main entry, administration office and restrooms.

(5) Infill of the center courtyard spaces to create campus learning & community commons spaces.

(6) Remodel of the 1960's lecture hall area to create a 'tech commons' space.

(7) Remodel of the existing locker room areas.

§ 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.)

32,000,000.00

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

.1 Design phase milestone dates, if any:

June 2022 – Design Development Drawings Complete
October 2022 – Construction Documents Complete

.2 Construction commencement date:

Summer 2022

.3 Substantial Completion date or dates:

August 2025

.4 Other milestone dates:

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

N/A

§ 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.)

N/A

§ 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.)

N/A

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

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(1446146154)

Mark Shepard
Fremont Public Schools

§ 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.)

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

.1 Geotechnical Engineer:

Kurtis Rohn
Thompson, Dreesen & Dorner, Inc
10836 Old Mill Rd.
Omaha, NE 68154

.2 Civil Engineer:

Olsson Associates
2111 S. 67th St. #200
Omaha, NE 68106

.3 Other, if any:

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

John Delaney
Morrissey Engineering
4940 North 118th St.
Omaha, NE 68164

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

Cleve Reeves
BVH Architecture
440 N 8 St Ste 100
Lincoln NE 68508
Office: 402-475-4551
Direct: 402-325-1509
creeves@bvh.com

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

Matt Schendt
Hausmann Construction, Inc.
11627 Virginia Plaza
LaVista, NE 68128

§ 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.)

N/A

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

Competitive Bidding

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

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager may agree to adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- .1 Modifications issued after execution of the Agreement;
- .2 Addenda or Riders issued prior to or in conjunction with the execution of the Agreement, with the Addenda or Riders bearing the latest date taking precedence;
- .3 This Agreement;
- .4 The supplementary conditions;
- .5 The General Conditions of the Contract for Construction;
- .6 The Drawings and Specifications; and
- .7 The Schedule of Contractor's Qualifications, Clarifications, and Assumptions, if any.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.3.4 During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 3.1.3.4. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project and furnish to the Owner, the Owner's Representative, and the Architect for their information a list of possible subcontractors, including suppliers who are to

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furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier. The Construction Manager shall not contract with any subcontractor or supplier that the Owner or the Architect has so objected.

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the 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.)

n/a

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standard, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction

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Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Manager's Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a specific line item for Owner's contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: 50% shall be the Construction Manager's Contingency and 50% shall be Owner's Contingency.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 Detailed construction schedule.
- .7 The Date of Final Completion upon which the proposed Guaranteed maximum Price is based, which date shall be acceptable to Owner.
- .8 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the estimated Cost of the Work shall include the Construction Manager's Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 3.2.2, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use, to cover costs, per Section 3.2.2.

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

§ 3.2.6 The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date of commencement of the Work is the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended.

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

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

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager from which the Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Exhibit A to AIA Document A133-2019.

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence on the first business day after the Contractor’s receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended and shall constitute day zero ("0") of the stated Completion Time for Work under the GMP Amendment, Exhibit A.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner, upon written request from the Construction Manager, shall provide to Construction Manager, or shall ask the Architect or other appropriate consultant to provide to Construction Manager, as soon as practically possible, such existing information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner’s objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment, systems sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

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

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

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Such information shall be provided for information only and is not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

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

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

§ 4.1.4.3 The Owner, 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 A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 4.3 Architect

The Construction Manager’s services shall be provided in conjunction with the services of an Architect, which the Owner has retained. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

\$0.00

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

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

Individual or Position

Rate

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

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable

(Paragraphs deleted)

thirty (30) days following the Construction Manager’s presentation to the Owner of an Application for Payment that is approved and signed by the Architect.

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.)

The Construction Manager’s Fee for Overhead & Profit is 2.75% of the Cost of the Work. The 2.75% Construction Manager’s Fee does not include costs for the Construction Manager’s General Conditions Costs as outlined in Exhibit C. The General Conditions costs will be added to the 2.75% fee upon execution of the Guaranteed Maximum Price Amendment to set the final Construction Manager’s Fee. The General Conditions Costs will be calculated by taking a monthly amount (to be agreed to in the GMP) multiplied by the total months of the Construction Phase of the Project.

provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self-performs for the Project; and further provided that no Construction Manager fee shall be paid on the Construction Manager’s Contingency or the Owner’s Contingency until funds are allocated from those contingencies to the Cost of the

Work. All charges, if any, for General Conditions shall be included in the Construction Manager's fee. No additional charges or reimbursement for any costs Construction Manager designates as General Conditions shall be allowed; all such General Conditions shall be included in the Construction Manager's fee. All reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal, and data processing fees and expenses; and all travel, meals and lodging shall be deemed to be included in the Construction Manager's fee.

Regardless of any other provision in this Agreement, in no event shall the shall the total amount paid to the Construction Manager, including compensation, fees, expenses, or any payment or reimbursement of any kind and for any reason, exceed % a percentage of the Cost of the Work to be set in the GMP.

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

Construction Manager's Fee, excluding General Conditions, for changes in the Work resulting in a net increase or decrease to the Cost of the Work shall be adjusted in an amount equal to the product of 2.75% multiplied by such net increase or decrease. By way of example and not limitation, if a change in the Work resulted in a net increase to the Cost of the Work in the amount of \$100,000.00, then the Construction Manager's Fee would be increased in an amount of \$2,750.

Notwithstanding the foregoing, for changes in the work which cause an increase to the Contract Time, Construction Manager shall be entitled to additional costs for General Conditions, separately from Fee, in a monthly amount to be set in the GMP.

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

See A201 General Conditions of the Contract, as amended.

§ 6.1.5 Rental rates for Construction Manager-owned equipment that which are not furnished as part of subcontracted work by Construction Manager shall be in the amounts as set forth on the rental rate schedule attached as Exhibit D, which rates shall be in effect for the duration of the performance of the Work, and shall be charged to the Owner as set forth in Section 7.5.2.

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

See section 11.3 below.

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

N/A

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner.

§ 6.3 Changes in the Work

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

Init.

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. Adjustments to the Guaranteed Maximum Price on account of Owner-approved changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be calculated in accordance with Article 7 of A201-2017, as amended; provided, however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by the Owner's Representative. Adjustments to the Guaranteed Maximum Price shall only be considered if presented in accordance with the Contract Documents prior to performing additional Work and incurring additional Costs.

(Paragraphs deleted)

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. However, "Cost of the Work" shall not include costs incurred because of the negligence, breach of contract, or other misconduct of Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of Work, shall be included in the Guaranteed Maximum Price.

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

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

§ 7.2 Labor Costs

§ 7.2.1 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.

(Paragraphs deleted)

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 9.1, as amended, shall be treated as Work performed by a Subcontractor under Section 7.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted to the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 7 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager.

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

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

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

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

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

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

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

(Paragraph deleted)

§ 7.5.4 Intentionally deleted.

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

§ 7.6 Miscellaneous Costs

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

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

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

§ 7.6.2 Intentionally deleted.

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

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

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

(Paragraph deleted)

§ 7.6.6 Intentionally deleted.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost directly resulting from the Owner's actions or decisions.

§ 7.6.9 Legal costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, the Construction Manager and the Architect, the Construction Manager and the Subcontractors, the Construction Manager and any material suppliers, or the Construction Manager and any third party reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

(Paragraphs deleted)

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Intentionally deleted.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Delay damages or claims; and
- .11 Storage costs, unless with prior written Owner approval.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 The Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work and that conform to the Contract Documents, and any such discounts, rebates, or refunds shall accrue to the Owner.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from subcontractors for the performance of all major elements of the Work. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which proposals will be accepted. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

§ 9.1.1 If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702-1992 for approval. Continuation sheets shall be submitted on AIA Form G703-1992. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within thirty (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents.

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

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

ten percent (10%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

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

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

If the Work from which retainage is withheld is fifty percent complete and if the Contractor has performed Work in accordance with the provisions of the Contract Documents, no more than five percent (5%) of any additional progress payment may be withheld as retainage **if** the Contractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the Work. Except as provided otherwise herein, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (I) any of the Owner's rights to retainage in connection with other payments to the Contractor of (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 Intentionally deleted.

§ 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 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

- .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.

- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, including the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, but excluding the Construction Manager's responsibility to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect, and the Construction Manager has provided all documents required by Sections 3.5.7 and 9.10.2 of AIA Document A201-2017, as amended, and the Owner's Board of Education has voted to accept the Work and approve Final Payment.

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

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

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

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

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after approval from the Owner's Board of Education.

(Paragraph deleted)

§ 11.3 Time

§ 11.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are and will continue to be impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion that such sums are liquidated direct damages and shall not be construed as a penalty and

that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

§ 11.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to Five Thousand Dollars (\$5,000.00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 11.3.3 Timely Final Completion is an essential condition of this Agreement, Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of Five Thousand Dollars (\$5,000.00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 11.3.4 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 11.4 Interest

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

twelve percent (12%) per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1

The Construction Manager and Owner may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the Construction Manager and Owner.

(Paragraphs deleted)

§ 12.2

(Paragraphs deleted)

Notwithstanding any reference to arbitration contained in this Agreement, neither the Construction Manager nor the Owner shall be obligated to resolved any Claim through arbitration.

(Paragraphs deleted)

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

Zero Dollars (\$0.00)

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

(Paragraphs deleted)

§ 14.3.1 through 14.3.3 Intentionally deleted. For the Preconstruction Phase and the Construction Phase, the Construction Manager shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™–2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

Init.

(Paragraphs deleted)

(Table deleted)

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

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

§ 14.5 Governing Law

Section 13.1 of AIA Document A201–2017 applies to both the Preconstruction and Construction Phases.

§ 14.6 Fair Labor Standards

The Construction Manager shall maintain fair labor standards throughout the performance of this Contract. The Construction Manager shall file with the Owner a statement that the Construction Manager is complying with, and will continue to comply with, fair labor standards in the pursuit of its business and in the execution of the Contract. Any additional contract entered into between Construction Manager and Owner shall include a provision that in the execution of the contract, fair labor standards shall be maintained. For purposes of this section, the phrase "fair labor standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Construction Manager.

§ 14.7 Payment of Unemployment Compensation

The Construction Manager shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.

§ 14.8 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

§ 14.9 The Construction Manager shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009, and who are physically performing services within the State of Nebraska. If the Construction Manager employs or contracts with any Subcontractor in connection with this Agreement, the Construction Manager shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

§ 14.10 Indemnification

§ 14.10.1 To the fullest extent permitted by law, the Construction Manager shall defend, indemnify, and hold harmless the Owner and its officers, board members, employees, agents, consultants, and representatives (the "Indemnitees") from and against any and all claims, demands, damages, losses, expenses, lawsuits, actions, cross-claims, counterclaims, third-party actions, liens, damages, debts, obligations, exemplary damages, consequential damages, punitive damages, liabilities, judgments, and causes of action (including without limitation reasonable consultants' and attorneys' fees and expenses), that arise out of, are related to, or are in connection with this Agreement, the Project, the Work, the Construction Manager's services, the Construction Manager's performance hereunder, and/or the Construction Manager's conduct at or related to the Project or the Owner's property (hereinafter "Indemnity Claims"), provided that any such Indemnity Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use of the same, but only to the extent caused by the intentional, reckless, or negligent acts or omissions of the Construction Manager, its subcontractors, sub-subcontractors, or its material suppliers, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be

construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 14.10.

Notwithstanding the foregoing, the Construction Manager's obligations in this Section 14.10 specifically except any obligation to hold harmless, defend, or indemnify an Indemnitee against any Indemnity Claim solely caused by such Indemnitee's own negligent conduct.

§ 14.10.2 The indemnification obligation under this Section 14.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Construction Manager or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 14.11 The Construction Manager and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

§ 14.12 The Construction Manager and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Construction Manager and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Construction Manager and all Subcontractor, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach. The District may suspend or terminate the Construction Manager, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

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

§ 14.14 The Construction Manager's federal employer identification number is: 45-0523054.

§ 14.15 The Construction Manager acknowledges that the Owner must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

§ 14.16 When present on Owner's property, Construction Manager and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall:

- .1 wear uniform at all times with company identification;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the school district's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

§ 14.17 The Construction Manager shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by Owner. Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement, together with all written modifications, amendments and riders signed by both parties, represents the entire agreement between the Owner and the Construction Manager concerning the subject matter herein and supersedes all prior negotiations, representations or agreements, whether written or oral, between the Owner and the Construction Manager. This Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager.

Init.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed, as amended
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds, as amended
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as amended, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .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.)

Exhibit C – Fee Matrix
Exhibit D – Rental Rates

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

OWNER *(Signature)*

Mark Shepard Superintendent
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Chad Wiles Executive Vice President
(Printed name and title)

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 10:13:31 CT on 07/05/2022.

PAGE 1

AGREEMENT made as of the day of July in the year 2022

...

Fremont Public Schools, a/k/a Dodge County School District 27-0001
130 E. 9th Street
Fremont, NE 68025

...

Hausmann Construction, Inc.
8885 Executive Woods Drive
Lincoln, NE 68512

...

Fremont Public Schools
2021 Bond Program

...

BVH Architecture
440 N 8 St Ste 100
Lincoln NE 68508
402-475-4551

PAGE 2

TBD

...

- (1) Geothermal well field, track and field upgrades
- (2) Indoor Air Quality improvements to the existing campus to the extents shown in the attached plan (BVH to provide attachment).
- (3) Northwest addition to extend the existing commons and create an athletic directors office suite.
- (4) Demolition of the existing CTE/'old shop' spaces to create a new main entry, administration office and restrooms.
- (5) Infill of the center courtyard spaces to create campus learning & community commons spaces.
- (6) Remodel of the 1960's lecture hall area to create a 'tech

commons' space.
(7) Remodel of the existing locker room areas.

PAGE 3

32,000,000.00

...

June 2022 – Design Development Drawings Complete
October 2022 – Construction Documents Complete

...

Summer 2022

...

August 2025

...

N/A

...

N/A

...

N/A

PAGE 4

Mark Shepard
Fremont Public Schools

...

Kurtis Rohn
Thompson, Dreesen & Dorner, Inc
10836 Old Mill Rd.
Omaha, NE 68154

...

Olsson Associates
2111 S. 67th St. #200
Omaha, NE 68106

...

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

John Delaney
Morrissey Engineering
4940 North 118th St.
Omaha, NE 68164

...

Cleve Reeves
BVH Architecture
440 N 8 St Ste 100
Lincoln NE 68508
Office: 402-475-4551
Direct: 402-325-1509
creeves@bvh.com

...

Matt Schendt
Hausmann Construction, Inc.
11627 Virginia Plaza
LaVista, NE 68128

...

N/A
PAGE 5

Competitive Bidding

...

N/A

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

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- .1 Modifications issued after execution of the Agreement;
- .2 Addenda or Riders issued prior to or in conjunction with the execution of the Agreement, with the Addenda or Riders bearing the latest date taking precedence;
- .3 This Agreement;

<u>.4</u>	<u>The supplementary conditions;</u>
<u>.5</u>	<u>The General Conditions of the Contract for Construction;</u>
<u>.6</u>	<u>The Drawings and Specifications; and</u>
<u>.7</u>	<u>The Schedule of Contractor's Qualifications, Clarifications, and Assumptions, if any.</u>

...

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

PAGE 6

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

...

§ 3.1.3.4 During the Pre-Construction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 3.1.3.4. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

PAGE 7

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

...

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the ~~Project~~ Project and furnish to the Owner, the Owner's Representative, and the Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such subcontractor or supplier. The receipt

of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to object to or reject any proposed subcontractor or supplier. The Construction Manager shall not contract with any subcontractor or supplier that the Owner or the Architect has so objected.

PAGE 8

n/a

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 ~~To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standard, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Manager's Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a specific line item for Owner's contingency in the Guaranteed Maximum Price, then the contingency amount shall be split in half: 50% shall be the Construction Manager's Contingency and 50% shall be Owner's Contingency.

PAGE 9

.6 Detailed construction schedule.

.7 The Date of Final Completion upon which the proposed Guaranteed maximum Price is based, which date shall be acceptable to Owner.

.8 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency-estimated Cost of the Work shall include the Construction Manager's Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order-costs arising under Section 3.2.2, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use, to cover costs, per Section 3.2.2.

...

§ 3.2.6 The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The date of commencement of the Work is the first business day after the Contractor's receipt of the written notice to proceed, as provided in Section 8.1.2 of AIA Document A201-2017, as amended.

PAGE 10

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

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Exhibit A to AIA Document A133-2019.

...

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment, on the first business day after the Contractor's receipt of the written notice to proceed, a provided in Section 8.1.2 of AIA Document A201-2017, as amended and shall constitute day zero ("0") of the stated Completion Time for Work under the GMP Amendment, Exhibit A.

...

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth Owner, upon written request from the Construction Manager, shall provide to Construction Manager, or shall ask the Architect or other appropriate consultant to provide to Construction Manager, as soon as practically possible, such existing information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements, expandability requirements, special equipment, systems sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

PAGE 11

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of Such information shall be provided for information only and is not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

...

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

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

PAGE 12

\$0.00

...

§ 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~~may be equitably adjusted.

...

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

~~(Insert rate of monthly or annual interest agreed upon.)~~

—%

thirty (30) days following the Construction Manager's presentation to the Owner of an Application for Payment that is approved and signed by the Architect.

...

The Construction Manager's Fee for Overhead & Profit is 2.75% of the Cost of the Work. The 2.75% Construction Manager's Fee does not include costs for the Construction Manager's General Conditions Costs as outlined in Exhibit C. The General Conditions costs will be added to the 2.75% fee upon execution of the Guaranteed Maximum Price Amendment to set the final Construction Manager's Fee. The General Conditions Costs will be calculated by taking a monthly amount (to be agreed to in the GMP) multiplied by the total months of the Construction Phase of the Project.

provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self-performs for the Project; and further provided that no Construction Manager fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work. All charges, if any, for General Conditions shall be included in the Construction Manager's fee. No additional charges or reimbursement for any costs Construction Manager designates as General Conditions shall be allowed; all such General Conditions shall be included in the Construction Manager's fee. All reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal, and data processing fees and expenses; and all travel, meals and lodging shall be deemed to be included in the Construction Manager's fee.

Regardless of any other provision in this Agreement, in no event shall the shall the total amount paid to the Construction Manager, including compensation, fees, expenses, or any payment or reimbursement of any kind and for any reason, exceed % a percentage of the Cost of the Work to be set in the GMP.

PAGE 13

Construction Manager's Fee, excluding General Conditions, for changes in the Work resulting in a net increase or decrease to the Cost of the Work shall be adjusted in an amount equal to the product of 2.75% multiplied by such net increase or decrease. By way of example and not limitation, if a change in the Work resulted in a net increase to the Cost of the Work in the amount of \$100,000.00, then the Construction Manager's Fee would be increased in an amount of \$2,750.

Notwithstanding the foregoing, for changes in the work which cause an increase to the Contract Time, Construction Manager shall be entitled to additional costs for General Conditions, separately from Fee, in a monthly amount to be set in the GMP.

...

See A201 General Conditions of the Contract, as amended.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~one~~ percent (—%) of the standard rental rate paid at the place of the Project that which are not furnished as part of subcontracted work by Construction Manager shall be in the amounts as set forth on the rental rate schedule attached as Exhibit D, which rates shall be in effect for the duration of the performance of the Work, and shall be charged to the Owner as set forth in Section 7.5.2.

...

See section 11.3 below.

...

N/A

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner.

PAGE 14

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7

of AIA Document A201–2017, General Conditions of the Contract for Construction. Adjustments to the Guaranteed Maximum Price on account of Owner-approved changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be calculated in accordance with Article 7 of A201-2017, as amended; provided, however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by the Owner’s Representative. Adjustments to the Guaranteed Maximum Price shall only be considered if presented in accordance with the Contract Documents prior to performing additional Work and incurring additional Costs.

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

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

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

...

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. However, "Cost of the Work" shall not include costs incurred because of the negligence, breach of contract, or other misconduct of Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of Work, shall be included in the Guaranteed Maximum Price.

...

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

...

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

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

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

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

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

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 9.1, as amended, shall be treated as Work performed by a Subcontractor under Section 7.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted to the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 7 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager.

PAGE 15

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

~~§ 7.5.4 Intentionally deleted.~~

...

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

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

~~Intentionally deleted.~~

...

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

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

~~Intentionally deleted.~~

...

~~§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents directly resulting from the Owner's actions or decisions.~~

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

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

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

PAGE 16

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

~~Intentionally deleted.~~

...

- ~~.6 Except as provided in Section 7.7.3 of this Agreement, costs Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;~~

...

- ~~.9 Costs for services incurred during the Preconstruction Phase.Phase;~~
~~.10 Delay damages or claims; and~~
~~.11 Storage costs, unless with prior written Owner approval.~~

...

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

PAGE 17

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

advice of the Construction Manager and subject to the reasonable objection of the Architect, which proposals will be accepted. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

...

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ five (5) years after final payment, or for such longer period as may be required by law.

...

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

(Federal, state or local laws may require payment within a certain period of time.) The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702-1992 for approval. Continuation sheets shall be submitted on AIA Form G703-1992. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within thirty (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents.

PAGE 18

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values~~ values, less any unused

Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

...

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

PAGE 19

ten percent (10%)

...

If the Work from which retainage is withheld is fifty percent complete and if the Contractor has performed Work in accordance with the provisions of the Contract Documents, no more than five percent (5%) of any additional progress payment may be withheld as retainage if the Contractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the Work. Except as provided otherwise herein, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (I) any of the Owner's rights to retainage in connection with other payments to the Contractor of (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

...

~~§ 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.~~

Intentionally deleted.

...

~~§ 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. The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:~~

- .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2017, as amended.
- .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.
- .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

PAGE 20

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

...

- .3 a final Certificate for Payment has been issued by the ~~Architect in accordance with Section 4.2.2.2~~ Architect, and the Construction Manager has provided all documents required by Sections 3.5.7 and 9.10.2 of AIA Document A201-2017, as amended, and the Owner's Board of Education has voted to accept the Work and approve Final Payment.

...

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

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

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

approval from the Owner's Board of Education.

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

§ 11.3 Interest Time

§ 11.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are and will continue to be impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion that such sums are liquidated direct damages and shall not be construed as a penalty and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the

agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorney fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

§ 11.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to Five Thousand Dollars (\$5,000.00) per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 11.3.3 Timely Final Completion is an essential condition of this Agreement, Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of Five Thousand Dollars (\$5,000.00) per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 11.3.4 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 11.4 Interest
PAGE 21

%—twelve percent (12%) per annum

...

§ 12.1 Initial Decision Maker

The Construction Manager and Owner may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the Construction Manager and Owner.

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

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

— Arbitration pursuant to Article 15 of AIA Document A201-2017 Notwithstanding any reference to arbitration contained in this Agreement, neither the Construction Manager nor the Owner shall be obligated to resolved any Claim through arbitration.

— Litigation in a court of competent jurisdiction

— Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction. **§ 12.3** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

PAGE 22

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

PAGE 23

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

...

Zero Dollars (\$0.00)

...

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than —(\$ —) for each occurrence and —(\$ —) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than —(\$ —) per accident for bodily injury, death of any person, and property damage

arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

~~§ 14.3.1.4~~ Workers' Compensation at statutory limits and Employers Liability with policy limits not less than — (\$ —) each accident, — (\$ —) each employee, and — (\$ —) policy limit.

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

~~§ 14.3.1.6 Other Insurance~~

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

~~§ 14.3.1 through 14.3.3~~ Intentionally deleted. For the Preconstruction Phase and the Construction Phase, the Construction Manager shall purchase, maintain, and furnish insurance and surety bonds as set forth in AIA Document A133™-2019, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

Coverage

Limits

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

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

~~§ 14.3.2 Construction Phase~~

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

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

PAGE 24

~~§ 14.5 Other provisions: Governing Law~~

~~Section 13.1 of AIA Document A201-2017 applies to both the Preconstruction and Construction Phases.~~

~~§ 14.6 Fair Labor Standards~~

~~The Construction Manager shall maintain fair labor standards throughout the performance of this Contract. The Construction Manager shall file with the Owner a statement that the Construction Manager is complying with, and will continue to comply with, fair labor standards in the pursuit of its business and in the execution of the Contract. Any additional contract entered into between Construction Manager and Owner shall include a provision that in the execution of the contract, fair labor standards shall be maintained. For purposes of this section, the phrase "fair labor~~

standards" means such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Construction Manager.

§ 14.7 Payment of Unemployment Compensation

The Construction Manager shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.

§ 14.8 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

§ 14.9 The Construction Manager shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009, and who are physically performing services within the State of Nebraska. If the Construction Manager employs or contracts with any Subcontractor in connection with this Agreement, the Construction Manager shall include a provision in the contract requiring the Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

§ 14.10 Indemnification

§ 14.10.1 To the fullest extent permitted by law, the Construction Manager shall defend, indemnify, and hold harmless the Owner and its officers, board members, employees, agents, consultants, and representatives (the "Indemnitees") from and against any and all claims, demands, damages, losses, expenses, lawsuits, actions, cross-claims, counterclaims, third-party actions, liens, damages, debts, obligations, exemplary damages, consequential damages, punitive damages, liabilities, judgments, and causes of action (including without limitation reasonable consultants' and attorneys' fees and expenses), that arise out of, are related to, or are in connection with this Agreement, the Project, the Work, the Construction Manager's services, the Construction Manager's performance hereunder, and/or the Construction Manager's conduct at or related to the Project or the Owner's property (hereinafter "Indemnity Claims"), provided that any such Indemnity Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use of the same, but only to the extent caused by the intentional, reckless, or negligent acts or omissions of the Construction Manager, its subcontractors, sub-subcontractors, or its material suppliers, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 14.10.

Notwithstanding the foregoing, the Construction Manager's obligations in this Section 14.10 specifically except any obligation to hold harmless, defend, or indemnify an Indemnitee against any Indemnity Claim solely caused by such Indemnitee's own negligent conduct.

§ 14.10.2 The indemnification obligation under this Section 14.10 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Construction Manager or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 14.11 The Construction Manager and all Subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

§ 14.12 The Construction Manager and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Construction Manager and all Subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Construction Manager and all Subcontractor, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this

provision may be considered a material breach. The District may suspend or terminate the Construction Manager, Subcontractor, or both if it violates these laws, regulations, or policies or this provision.

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

§ 14.14 The Construction Manager's federal employer identification number is: 45-0523054.

§ 14.15 The Construction Manager acknowledges that the Owner must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

§ 14.16 When present on Owner's property, Construction Manager and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall:

- .1 wear uniform at all times with company identification;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the school district's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

§ 14.17 The Construction Manager shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by Owner. Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

PAGE 25

§ 15.1 This Agreement represents the entire and integrated Agreement, together with all written modifications, amendments and riders signed by both parties, represents the entire agreement between the Owner and the Construction Manager concerning the subject matter herein and supersedes all prior negotiations, representations or agreements, either written or oral, whether written or oral, between the Owner and the Construction Manager. This Agreement may be amended only by written instrument signed by both Owner and the Owner and the Construction Manager.

PAGE 26

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed, as amended
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds, as amended
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, as amended, dated as indicated below:

...

(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.)

...

Exhibit C – Fee Matrix
Exhibit D – Rental Rates

...

Mark Shepard Superintendent

Chad Wiles Executive Vice President



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:13:31 CT on 07/05/2022 under Order No. 2114244452 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fremont Public Schools
2021 Bond Program

THE OWNER:

(Name, legal status and address)

Fremont Public Schools, a/k/a Dodge County School District 27-0001
130 E. 9th Street
Fremont, NE 68025

THE CONTRACTOR:

(Name, legal status and address)

Hausmann Construction, Inc.
8885 Executive Woods Drive
Lincoln, NE 68512

THE ARCHITECT:

(Name, legal status and address)

BVH Architecture
440 N 8 St Ste 100
Lincoln NE 68508
402-475-4551

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION

ADDITIONS AND DELETIONS:


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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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- 10 PROTECTION OF PERSONS AND PROPERTY
 - 11 INSURANCE AND BONDS
 - 12 UNCOVERING AND CORRECTION OF WORK
 - 13 MISCELLANEOUS PROVISIONS
 - 14 TERMINATION OR SUSPENSION OF THE CONTRACT
 - 15 CLAIMS AND DISPUTES

Init.

/

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

/

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors
and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the
Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,
12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate
Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,
Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

Emergencies

10.4, 14.1.1.2, **15.1.5**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,

14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,

10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,

9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,

11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,

15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,

10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,

15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

Init.

/

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

/

Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.2**
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, **13.3**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3**
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2,
15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Init.

/

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1

Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME
8

Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,
15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work
12.1

Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3

Unit Prices
7.3.3.2, 9.1.2

Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site
3.13, 6.1.1, 6.2.1

Values, Schedule of
9.2, 9.3.1

Waiver of Claims by the Architect
13.3.2

Waiver of Claims by the Contractor
9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages
14.2.4, 15.1.7

Waiver of Liens
9.3, 9.10.2, 9.10.4

Waivers of Subrogation
6.1.1, 11.3

Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2

Weather Delays
8.3, 15.1.6.2

Work, Definition of
1.1.3

Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2

Written Interpretations
4.2.11, 4.2.12

Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 Approved

When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Architect shall be understood.

§ 1.1.10 Provide

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When the word "provide," including derivatives, is used, it shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications.

§ 1.1.11 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract that modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

§ 1.1.12 Bulletins

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract that request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

§ 1.1.13 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) or discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other

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reserved rights in their Instruments of Service, including copyrights, except as provided otherwise in any agreement between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's, Architect's consultants', or any other party's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

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§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if the Owner fails to make payments to the Contractor as the Contract Documents require or a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants,

sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 EXTENT OF OWNER RIGHTS

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work,

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notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a professional and safe manner and in accordance with the Contract Documents and all federal, state, and local laws, regulations, and ordinances.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1. Claims for additional time or additional compensation as a result of Contractor's failure to familiarize himself with all local conditions and the Contract Documents will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3,

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the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall be responsible for the correct layout to line, level and dimension of all Work as shown on the Drawings. He shall notify the Architect of any discrepancy that may exist between site conditions and the Drawings and shall obtain written instructions from the Architect before proceeding with this Work.

§ 3.3.5 The Contractor shall inspect all materials as delivered to the premises and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.6 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body having jurisdiction over the Project. Failure to obtain any permits, licenses or other approvals because of a failure of the Contractor to conform to this requirement shall not extend the Contract Time, and the Contractor shall not be entitled to an increase in the Contract Sum therefor.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.2.1 If the Contractor fails to give such notices, he shall be liable for and shall defend, indemnify and hold harmless the Owner and Architect, and their respective employees, officers and agents, against any results in fines, penalties, judgments or damages, including usual attorneys' fees imposed on or incurred by the parties indemnified hereunder.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately

suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.10.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the

deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except

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with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the final payment is due from Owner, and (with the Owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and

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completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent or reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 The maximum percent allowed for combined overhead and profit on costs due to Change Orders or Construction Change Directives shall be as follows:

- (a) For the subcontractor, 10% of the net extra cost of the Work performed.
- (b) For the Contractor, 5% of the net extra cost of the Work performed by subcontractors.
- (c) For work involving only the Contractor's own forces, 15% of the net extra cost of the Work.

§ 7.1.4.1 On work deleted from the Contract, credit to the Owner shall be the net cost plus the overhead and profit percentages noted in 7.1.4 (a)–(c).

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the work, (iii) loss of productivity, or (v) other similar claims (items I through iv herein collectively referred to in this Section 8.3.2 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 day of full execution of this Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner, the Construction Manager or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If any trade breakdown had been initially approved and subsequently used but was later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. If paper copies are required by the Contract, the Contractor shall submit three copies of a statement showing the value of his material and labor satisfactorily incorporated in the building and acceptable material or equipment suitably stored at the site. Originals of the current editions of AIA Documents No. G702 and G703 shall be used for the applications for payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The Contractor's Surety must agree, in writing, to the amounts included in each Application for

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- .3 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .4 Payment shall not include any charges for overhead or profit on stored materials.
- .5 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to Contractor.

§ 9.3.4 Contractor shall submit Applications for Payment using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Nebraska covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Nebraska and may justify termination of Contractor's Contract with Owner.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly

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due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Notwithstanding any other provision in this Agreement, the issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and

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on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice. The Contractor shall not use explosives or store them on Owner's property without written approval from the Owner and reasonable advance notice to the Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

Injury or Damage to Person or Property. If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other parties to investigate the matter.

§ 10.2.9 When present on the Owner's property, the Contractor, Subcontractors, a Sub-subcontractor, or anyone directly or indirectly employed by or representing any of them, shall

- .1 wear uniform at all times with company identification;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the Owner's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.11 When all or a portion of the Work is suspended for any reasons, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance (as defined by the contract documents) not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 If Contractor imports hazardous materials onto the project site, then Contractor hereby indemnifies and holds harmless the Owner, its consultants, trustees, officers, agents and employees, against any claims arising out of or related to such importation, including but not limited to costs and expenses the Owner incurs for remediation of a material or substance the contractor brings to the site, as provided for in subparagraph 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 Intentionally omitted.

§ 10.3.6 Intentionally omitted.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Nebraska in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
- .2 Bonds shall be executed by a responsible surety licensed in Nebraska, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
- .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
- .4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
- .5 Every Bond under this Section 11 .1.2 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - .1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - .2 The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and

Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Nebraska. Any litigation shall be conducted in the state or federal court that has jurisdiction over the county in which the Project is located.

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after

bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 The following provisions for the execution of requisite NOI and SWPPP regulations as required by law are as follows:

- .1 Prior to or concurrent with the initiation of construction activity, the Contractor shall file a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) with the Natural Resources District (NRD) or other local Authority Having Jurisdiction (AHJ), if required thereby, for authorization to discharge stormwater under the National Pollutant Discharge Elimination System (NPDES) General Permit. If applicable, the SWPPP must include the following statements:
 - a. The undersigned certifies this Plan has been prepared in accordance with the terms of the inter-local agreement for NPDES compliance.
 - b. Unless otherwise indicated, all erosion and sediment control measures (ESCMs) and stormwater best management practices (BMPs) will be constructed and maintained according to the NRD.
 - c. Following rough grading operations, permanent or temporary stabilization shall be completed within seven (7) calendar days to the surface of all perimeter sediment controls, topsoil stockpiles, and any other disturbed or graded areas on-site which are not being used for material storage, or on which actual earthmoving activities are not being performed.
 - d. All ESCMs will be inspected by responsible personnel at least once per week and after any storm event > ½-inch of precipitation during any 24-hour period. Any necessary repairs or cleanup to maintain the effectiveness of the BMPs shall be made immediately.
- .2 A current and updated copy of the SWPPP shall be available on-site at all times and its BMPs shall be maintained throughout construction until final site stabilization is achieved, and maintenance agreements for any permanent facilities have been established in accordance with all conditions of the Permit. Temporary ESCMs shall be removed within thirty (30) days thereafter.
- .3 All associated fees and costs to design and execute the SWPPP plan, as well as costs for inspection and reporting procedures, shall be at the expense of the Contractor.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing.

§ 13.6 GENERAL PROVISIONS

§ 13.6.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and

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subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.6.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.6.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract Documents.

§ 13.6.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or in the applicable subcontract.

§ 13.6.5 If more than two submittals or reviews are required for any shop drawing or other submittals, the Contractor shall be liable for all costs and expenses incurred by the Architect or Architect's consultants as the result of such submittals. Costs shall be determined using the Architect's or Architect's consultants hourly rates for fees for additional services as well as the Architect's or Architect's consultants standard fees for mileage, travel, long-distance phone calls, copies, and all other expenses incurred. Any fees due under these circumstances shall be deducted by the Owner from the amounts due the Contractor and shall be paid by Owner directly to the Architect.

§ 13.6.6 If the Work is not complete after submittal of the Contractor's written notice pursuant to Paragraph 9.10.1, the Contractor shall be liable for any additional costs and expenses incurred by the Architect or Architect's consultants for any inspection following the initial inspection after receipt of such notice. Additionally, if the Contractor submits an extensive number of claims and the majority of such claims are rejected, the Contractor shall be responsible for any additional costs and expenses incurred by the Architect or Architect's consultants for any such rejected claims. If the Contractor defaults and causes the Architect or Architect's consultants to provide additional services, the Contractor shall be responsible for same. Costs shall be determined using the Architect or Architect's consultants hourly rates for fees for additional services as well as the Architect's or Architect's consultants standard fees for mileage, travel, long-distance phone calls, copies, and all other expenses incurred. Any fees due under these circumstances shall be deducted by the Owner from the amounts due the Contractor and shall be paid by the Owner directly to the Architect.

§ 13.6.7 If all Closeout Documents, as required by the contract documents, have not been submitted to the Architect or Architect's consultants within 60 days from the date of Substantial Completion, the Contractor shall be liable for all costs and expenses incurred by the Architect or Architect's consultants to review and process the Closeout Documents beyond that date. Any fees due under these circumstances shall be deducted by the Owner from the amounts due the Contractor and shall be paid by the Owner directly to the Architect.

§ 13.7 NO ORAL WAIVER

§ 13.7 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.8 BACKGROUND CHECKS

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The Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the Owner. The Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be

(Paragraphs deleted)
stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon 20 additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid

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to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2

(Paragraphs deleted)

Intentionally omitted.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with the concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or

potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

§ 15.1.7 Intentionally omitted.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision by the Initial Decision Maker shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision

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Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation or any other form of dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3 Mediation

§ 15.3.1 The parties may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim, dispute, or other matter that is not mediated or that is not resolved in mediation will be subject to litigation pursuant to Section 13.1.

(Paragraphs deleted)

§ 15.4 No Arbitration

§ 15.4.1 The Contractor and the Owner shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract. Any reference herein to arbitration in connection with such Claims or disputes is hereby deemed void.

(Paragraphs deleted)

Additions and Deletions Report for **AIA® Document A201® – 2017**

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PAGE 1

Fremont Public Schools
2021 Bond Program

THE OWNER:

(Name, legal status and address)

Fremont Public Schools, a/k/a Dodge County School District 27-0001
130 E. 9th Street
Fremont, NE 68025

THE CONTRACTOR:

Hausmann Construction, Inc.
8885 Executive Woods Drive
Lincoln, NE 68512

...

(Name, legal status and address)

BVH Architecture
440 N 8 St Ste 100
Lincoln NE 68508
402-475-4551

PAGE 10

§ 1.1.9 Approved

When the words "approved," "satisfactory," "proper," or "as directed" are used, approval by the Architect shall be understood.

§ 1.1.10 Provide

When the word "provide," including derivatives, is used, it shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications.

§ 1.1.11 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract that modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications, or corrections.

§ 1.1.12 Bulletins

Bulletins are written or graphic instruments issued by the Architect after the execution of the Contract that request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

§ 1.1.13 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) or discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

PAGE 11

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including ~~copyrights~~ copyrights, except as provided otherwise in any agreement between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' Architect's, Architect's consultants', or any other party's~~ Architect's, Architect's consultants', or any other party's reserved rights.

PAGE 12

§ 1.9 Confidentiality

§ 1.9.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.9.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

§ 1.9.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.9.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.9.5 Any and all inventions and discoveries, whether or not patent-able, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

PAGE 13

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a require or a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, ~~Sum,~~ the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

PAGE 14

§ 2.6 EXTENT OF OWNER RIGHTS

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

PAGE 15

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents a professional and safe manner and in accordance with the Contract Documents and all federal, state, and local laws, regulations, and ordinances.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Prior to execution of the Agreement, the Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1. Claims for additional time or additional compensation as a result of Contractor's failure to familiarize himself with all local conditions and the Contract Documents will not be permitted.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

PAGE 16

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ 3.3.4 The Contractor shall be responsible for the correct layout to line, level and dimension of all Work as shown on the Drawings. He shall notify the Architect of any discrepancy that may exist between site conditions and the Drawings and shall obtain written instructions from the Architect before proceeding with this Work.

§ 3.3.5 The Contractor shall inspect all materials as delivered to the premises and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.6 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body having jurisdiction over the Project. Failure to obtain any permits, licenses or other approvals because of a failure of the Contractor to conform to this requirement shall not extend the Contract Time, and the Contractor shall not be entitled to an increase in the Contract Sum therefor.

PAGE 17

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may-shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

§ 3.7.2.1 If the Contractor fails to give such notices, he shall be liable for and shall defend, indemnify and hold harmless the Owner and Architect, and their respective employees, officers and agents, against any results in fines, penalties, judgments or damages, including usual attorneys' fees imposed on or incurred by the parties indemnified hereunder.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

PAGE 19

§ 3.10.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Subparagraph 3.10.4 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

PAGE 20

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a

manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

PAGE 21

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

PAGE 22

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment, construction, until the final payment is due from Owner, and (with the Owner's concurrence), from time to time during the one-year warranty period for correction of Work as set forth in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

PAGE 24

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed

Sub-subcontractors. § 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents.

Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract.

...

§ 5.4.2 Upon such assignment, if the Work-If the Work in connection with a subcontract has been suspended for more than 30 days, thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from any increase in direct costs incurred by such Subcontractor as a result of the suspension.

...

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

PAGE 25

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent-apparent or reasonably discoverable.

PAGE 26

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 7.3 and Subparagraph 9.7.1, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 The maximum percent allowed for combined overhead and profit on costs due to Change Orders or Construction Change Directives shall be as follows:

- (a) For the subcontractor, 10% of the net extra cost of the Work performed.
- (b) For the Contractor, 5% of the net extra cost of the Work performed by subcontractors.
- (c) For work involving only the Contractor's own forces, 15% of the net extra cost of the Work.

§ 7.1.4.1 On work deleted from the Contract, credit to the Owner shall be the net cost plus the overhead and profit percentages noted in 7.1.4 (a)-(c).

...

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

PAGE 28

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the work, (iii) loss of productivity, or (v) other similar claims (items I through iv herein collectively referred to in this Section 8.3.2 as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional interference with the Contractor's performance of the Work.

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

PAGE 29

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect within 10 day of full execution of this Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner, the Construction Manager or the Architect as

necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If any trade breakdown had been initially approved and subsequently used but was later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

...

§ 9.3.1 At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. If paper copies are required by the Contract, the Contractor shall submit three copies of a statement showing the value of his material and labor satisfactorily incorporated in the building and acceptable material or equipment suitably stored at the site. Originals of the current editions of AIA Documents No. G702 and G703 shall be used for the applications for payment.

...

§ 9.3.2 ~~Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:~~

- ~~.1 The location must be agreed to, in writing, by the Owner and Surety.~~
- ~~.2 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.~~
- ~~.3 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.~~
- ~~.4 Payment shall not include any charges for overhead or profit on stored materials.~~
- ~~.5 Payments for materials or equipment stored on or off the site shall be conditioned upon compliance by the Contractor with submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and or equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site, including applicable insurance (naming the Owner as inured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.~~

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to

the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under the Contractor or Subcontractor for items covered by payments made by the Owner to Contractor.

§ 9.3.4 Contractor shall submit Applications for Payment using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Nebraska covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Nebraska. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Nebraska and may justify termination of Contractor's Contract with Owner.

PAGE 31

§ 9.4.3 Notwithstanding any other provision in this Agreement, the issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

...

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

PAGE 32

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.
§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for

Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

PAGE 33

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

...

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

PAGE 35

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice. The Contractor shall not use explosives or store them on Owner's property without written approval from the Owner and reasonable advance notice to the Architect.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. Injury or Damage to Person or

Property. If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 When present on the Owner's property, the Contractor, Subcontractors, a Sub-subcontractor, or anyone directly or indirectly employed by or representing any of them, shall

- .1 wear uniform at all times with company identification;
- .2 carry photo identification;
- .3 not smoke or otherwise use tobacco;
- .4 not use, or be under the influence of, alcohol or drugs;
- .5 not carry a firearm or other weapon; and
- .6 comply with all of the Owner's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.11 When all or a portion of the Work is suspended for any reasons, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

PAGE 36

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a concealed and undisclosed hazardous material or substance (as defined by the contract documents) not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from~~

~~performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. If Contractor imports hazardous materials onto the project site, then Contractor hereby indemnifies and holds harmless the Owner, its consultants, trustees, officers, agents and employees, against any claims arising out of or related to such importation, including but not limited to costs and expenses the Owner incurs for remediation of a material or substance the contractor brings to the site, as provided for in subparagraph 3.18.~~

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

~~§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Intentionally omitted.~~

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. Intentionally omitted.~~

PAGE 37

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Nebraska in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:~~

- ~~.1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.~~
- ~~.2 Bonds shall be executed by a responsible surety licensed in Nebraska, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.~~
- ~~.3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.~~
- ~~.4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.~~
- ~~.5 Every Bond under this Section 11 .1.2 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
 - ~~.1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.~~
 - ~~.2 The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.~~~~

...

§ 11.1.5 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.

PAGE 39

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

PAGE 40

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. laws of the State of Nebraska. Any litigation shall be conducted in the state or federal court that has jurisdiction over the county in which the Project is located.

...

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

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

...

§ 13.3.1 ~~Duties~~ Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

PAGE 41

§ 13.4.7 The following provisions for the execution of requisite NOI and SWPPP regulations as required by law are as follows:

- .1 Prior to or concurrent with the initiation of construction activity, the Contractor shall file a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) with the Natural Resources District (NRD) or other local Authority Having Jurisdiction (AHJ), if required thereby, for authorization to discharge stormwater under the National Pollutant Discharge Elimination System (NPDES) General Permit. If applicable, the SWPPP must include the following statements:
 - a. The undersigned certifies this Plan has been prepared in accordance with the terms of the inter-local agreement for NPDES compliance.
 - b. Unless otherwise indicated, all erosion and sediment control measures (ESCMs) and stormwater best management practices (BMPs) will be constructed and maintained according to the NRD.
 - c. Following rough grading operations, permanent or temporary stabilization shall be completed within seven (7) calendar days to the surface of all perimeter sediment controls, topsoil stockpiles, and any other disturbed or graded areas on-site which are not being used for material storage, or on which actual earthmoving activities are not being performed.
 - d. All ESCMs will be inspected by responsible personnel at least once per week and after any storm event > ½-inch of precipitation during any 24-hour period. Any necessary repairs or cleanup to maintain the effectiveness of the BMPs shall be made immediately.
- .2 A current and updated copy of the SWPPP shall be available on-site at all times and its BMPs shall be maintained throughout construction until final site stabilization is achieved, and maintenance agreements for any permanent facilities have been established in accordance with all conditions of the Permit. Temporary ESCMs shall be removed within thirty (30) days thereafter.
- .3 All associated fees and costs to design and execute the SWPPP plan, as well as costs for inspection and reporting procedures, shall be at the expense of the Contractor.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. ~~writing.~~

§ 13.6 GENERAL PROVISIONS

§ 13.6.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.6.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.6.3 Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract Documents.

§ 13.6.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or in the applicable subcontract.

§ 13.6.5 If more than two submittals or reviews are required for any shop drawing or other submittals, the Contractor shall be liable for all costs and expenses incurred by the Architect or Architect's consultants as the result of such submittals. Costs shall be determined using the Architect's or Architect's consultants hourly rates for fees for additional services as well as the Architect's or Architect's consultants standard fees for mileage, travel, long-distance phone calls, copies, and all other expenses incurred. Any fees due under these circumstances shall be deducted by the Owner from the amounts due the Contractor and shall be paid by Owner directly to the Architect.

§ 13.6.6 If the Work is not complete after submittal of the Contractor's written notice pursuant to Paragraph 9.10.1, the Contractor shall be liable for any additional costs and expenses incurred by the Architect or Architect's consultants for any inspection following the initial inspection after receipt of such notice. Additionally, if the Contractor submits an extensive number of claims and the majority of such claims are rejected, the Contractor shall be responsible for any additional costs and expenses incurred by the Architect or Architect's consultants for any such rejected claims. If the Contractor defaults and causes the Architect or Architect's consultants to provide additional services, the Contractor shall be responsible for same. Costs shall be determined using the Architect or Architect's consultants hourly rates for fees for additional services as well as the Architect's or Architect's consultants standard fees for mileage, travel, long-distance phone calls, copies, and all other expenses incurred. Any fees due under these circumstances shall be deducted by the Owner from the amounts due the Contractor and shall be paid by the Owner directly to the Architect.

§ 13.6.7 If all Closeout Documents, as required by the contract documents, have not been submitted to the Architect or Architect's consultants within 60 days from the date of Substantial Completion, the Contractor shall be liable for all costs and expenses incurred by the Architect or Architect's consultants to review and process the Closeout Documents beyond that date. Any fees due under these circumstances shall be deducted by the Owner from the amounts due the Contractor and shall be paid by the Owner directly to the Architect.

§ 13.7 NO ORAL WAIVER

§ 13.7 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.8 BACKGROUND CHECKS

The Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the Owner. The Owner will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

PAGE 43

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; and
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.2.stopped.

...

§ 14.1.4 If the Work is stopped for a period of ~~60-90~~ consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~seven-20~~ additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds~~ costs of finishing the Work, including compensation for the ~~Architect's Architects'~~ services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, ~~such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.~~

PAGE 44

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 ~~that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or~~
- .2 ~~that an equitable adjustment is made or denied under another provision of the Contract.~~ Intentionally omitted.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later-later~~; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with the concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

PAGE 45

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- 1** — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2** — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 Intentionally omitted.

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision a decision by the Initial Decision Maker shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

PAGE 46

§ 15.2.9 The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation or any other form of dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. The parties may mutually agree to submit to mediation any claim, dispute, or other matter in question arising out of or related to this Agreement, but shall not be obligated to do so as a prerequisite of instituting any legal action. If the parties agree to engage in mediation, they shall share in the payment of mediator's fees and filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim, dispute, or other matter that is not mediated or that is not resolved in mediation will be subject to litigation pursuant to Section 13.1.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 No Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

The Contractor and the Owner shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract. Any reference herein to arbitration in connection with such Claims or disputes is hereby deemed void.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:13:15 CT on 07/05/2022 under Order No. 2114244452 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



Fremont P.S. High School - Fee and General Conditions Matrix

For items listed below we have indicated which category the item falls by placing an "x" in the appropriate box

Items	Preconstruction Phase Fee	Overhead & Profit	General Conditions	Direct Costs of Work	Exclusions
Staffing					
Project Executive	X	X			
Project Manager	X		X		
Superintendent	X		X		
Project Engineer			X		
Estimators	X		X		
Schedulers			X		
Safety Manager			X		
Site Investigation	X				
Value Engineering	X				
Administration					
Profit		X			
Home Office Overheads		X			
Business Developments		X			
Training and Development		X			
Accounting		X			
Quality Control			X		
Risk Management		X			
Legal		X			
HR		X			
Licenses		X			
Warranty			X		
Other		X			
Temporary Construction					
Mobilization/Demobilization			X		
Trailers/Job Office			X		
Cell Phones			X		
Radios			X		
Copiers/Scanners/Printer			X		
Office Supplies			X		
Vehicles, Fuel, Maintenance			X		
Travel Expenses			X		
Document Reproduction			X		
Postage and Couriers			X		
Site Signage During Construction			X		
Latrines			X		
Water, Ice, Cups			X		
Dumpsters/Trash Removal				X	
Field Engineering Equipment			X		
Temporary Fire Protection			X		
Special Inspections					X
Safety Supplies				X	
Security			X		
Permits/Insurance					
Building Permits				X	X
Payment and Performance Bonds				X	
Builders Risk Insurance				X	
General Liability Insurance		X			
Miscellaneous					
Design Fees					X
Hazardous Material Surveys					X
Hazardous Material Abatement					X
Proposed Value	0%	2.75%			



2022 Rental Rates

Sales:
 Adam Madsen (402) 309.4316
 Service:
 Tom Martinosky (402) 613.8780
 Sam Higgins (402) 429.2471

Equipment	Model	Fuel	Day	Week	Month
Aerial Boom Lifts					
45' Straight 4x4	Genie S45	Diesel	\$245	\$575	\$1,450
65' Straight 4x4	Genie S65, JLG 660SJ, Manitou TJ65+	Diesel	\$300	\$750	\$2,100
85' Straight 4x4	Genie S85, JLG 860SJ, Manitou TJ85	Diesel	\$525	\$1,350	\$3,175
Electric Interior Lifts					
20' Vertical Lift	Genie GR-20	Electric	\$105	\$150	\$415
19' Scissor Lift	Skyjack 3219	Electric	\$95	\$135	\$385
26' Scissor Lift	Skyjack 3226, Skyjack 4626	Electric	\$125	\$200	\$485
32' Scissor Lift	Skyjack 4632	Electric	\$150	\$300	\$675
40' Scissor Lift	JLG 4069	Electric	\$215	\$515	\$1,250
Rough Terrain Scissor Lift					
26' with Outriggers	Genie 2669RT	Dual	\$135	\$375	\$850
33' with Outriggers	Genie 3369RT	Dual	\$180	\$460	\$950
Skidsteers					
Wheel ≥ 2,500 lbs	Mustang 2600R, 2700V	Diesel	\$175	\$600	\$1,800
Wheel > 3,000 lbs	Manitou 4200V	Diesel	\$180	\$675	\$2,100
Track < 3,000 lbs	Mustang/Manitou 1650RT, 2150RT, 2550RT	Diesel	\$185	\$700	\$2,200
Track 3,200 lbs	Mustang/Manitou 3200VT	Diesel	\$225	\$850	\$2,475
Telehandlers					
4,400 lb 4x4, 14' Reach	Gehl RS4-14 (Ground Engaging)	Diesel	\$275	\$775	\$2,200
6,000 lb 4x4, 34' Reach	Gehl RS6-34	Diesel	\$265	\$650	\$1,750
8,000 lb 4x4, 42' Reach	Gehl RS8-44	Diesel	\$275	\$850	\$2,450
10,000 lb 4x4 55' Reach	Gehl RS10-55	Diesel	\$425	\$1,150	\$3,100
Warehouse Forklifts					
5,000 lb Interior	Toyota 8FGU25, Manitou MI25G	Gas/LP	\$215	\$600	\$1,300
Loaders					
Wheel Loader	Deere 544K	Diesel	\$700	\$2,200	\$6,000
Track Loader	Caterpillar 953C, 953D	Diesel	\$850	\$2,400	\$6,500
Cranes					
110 Ton	Link-Belt 80110 Rough Terrain	Diesel	\$2,100	\$6,000	\$17,900
130 Ton	Link-Belt 80130 Rough Terrain	Diesel	\$2,700	\$8,000	\$23,500
160 Ton	Link-Belt 80160 Rough Terrain	Diesel	\$3,250	\$9,400	\$28,000
Excavators					
Mini Excavator	Mustang 170Z, Gehl Z17	Diesel	\$155	\$425	\$1,250
Mini Excavator	Mustang 350Z, Gehl Z35	Diesel	\$185	\$575	\$1,625
Mini Excavator	Deere 50G, Mustang 450Z, 550Z	Diesel	\$260	\$800	\$2,000
Backhoe	Deere 410K	Diesel	\$300	\$1,100	\$3,200
Air Compressors					
Towable 185CFM	Doosan P185	Diesel	\$75	\$245	\$675
Heaters					
170,000 BTU	L.B. White Tradesman 170	LP	\$50	\$100	\$275
400,000 BTU	L.B. White Tradesman 400	LP	\$85	\$125	\$300
170,000 BTU	L.B. White Premier 170DF	Dual	\$95	\$135	\$400
350,000 BTU	L.B. White Premier 350DF	Dual	\$115	\$175	\$475
400,000 BTU	Frost Fighter 400DF	Dual	\$120	\$185	\$500
750,000 BTU	L.B. White Foreman 750DF Indirect Fire	Dual	\$275	\$650	\$1,800
1 Million BTU	L.B. White Boss 1000DF	Dual	\$195	\$325	\$775

Hose Rental: \$1/ft/month



Equipment	Model	Fuel	Day	Week	Month
Attachments					
Man Basket 10'			\$50	\$175	\$400
Plate Packer	Kent		\$75	\$150	\$475
Hydraulic Breaker			\$135	\$415	\$1,300
Power Auger	Edge		\$75	\$250	\$700
Broom	72" Hopper, 72" Angle/Open		\$125	\$225	\$550
Brush Cutter	Edge		\$100	\$250	\$725
Excavator Buckets	10", 12", 18", 24", 36"		\$35	\$100	\$275
Skid Steer Buckets	Smooth or Tooth - 72", 78", 84"		\$40	\$125	\$295
Forklift Hook	Star Industries - 12K cap.		\$35	\$100	\$275
Forklift Spreader Bar	Star Industries: 12' - 20'		\$75	\$150	\$350
Crane Spreader Bar - 15 Ton	Boscaro EZBAR - 15T		\$90	\$240	\$750
Crane Spreader Bar - 35 Ton	Boscaro EZBAR - 35T		\$100	\$275	\$900
Rake	96"		\$125	\$395	\$900
Hippo Hopper	3 cu.yd		\$50	\$115	\$350
Skip Boxes			\$75	\$200	\$500
Snow Blade	Edge 84"		\$100	\$350	\$700
Miscellaneous					
Ground Thaw Machine	Heat King HK300	Diesel	\$775	\$2,300	\$6,500
Fan 36" - 42"		Electric	\$25	\$75	\$175
Negative Air 1200 CFM	Husqvarna A2000	Electric	\$50	\$115	\$300
Negative Air 600 CFM	Husqvarna A600	Electric	\$30	\$75	\$200
Dehumidifier	Drieaz Evolution, Drieaz LGR6000	Electric	\$40	\$110	\$325
Concrete Mixer		Electric	\$45	\$130	\$350
Concrete Blankets			\$10/ea	\$15/ea	\$33/ea
Jumping Jack Compactor	Mikasa MTX-60HD	Gas	\$45	\$150	\$450
Electric Jackhammer	Dewalt	Electric	\$100	\$200	\$450
Floor Buffer		Electric	\$85	\$125	\$350
Mobile Fall Protection	Raptor TriRex		\$105	\$325	\$1,000
Electric Pallet Jack	Vestil EPT-2547-30-E	Electric	\$45	\$135	\$425
Overhead Pallet Lifter	Star Industries 660GP		\$50	\$175	\$450
Sand Plate Compactor	Wacker Neuson	Gas	\$45	\$150	\$450
Trench Roller	Wacker Neuson, Bomag	Diesel	\$120	\$450	\$1,000
Core Drill	Husqvarna	Electric	\$50	\$150	\$500
Light Tower	Multiquip NightHawk LT12, Wanco	Gas	\$125	\$225	\$550
Gar-Bro Bucket 3-yd			\$95	\$245	\$780
Gar-Bro Bucket 5-yd			\$105	\$325	\$950
Trash Chute			\$125	\$350	\$1,000
20kw Towable Generator	Wanco WSP25	Diesel	\$125	\$385	\$1,100
40kw Towable Generator	Wacker G50	Diesel	\$165	\$525	\$1,600
Generator/Welder	Bobcat 250EFI	Diesel	\$85	\$215	\$565
MIG Welder	Millermatic 141, 210, 252	Electric	\$70	\$150	\$385
Dingo Utility Loader	Toro TX1000	Diesel	\$165	\$475	\$1,275
Concrete Buggy, Track	Allen AT 14F	Gas	\$125	\$385	\$1,050
UTV 2-door	Polaris 900XP, Honda RZR	Gas	\$95	\$295	\$700
UTV 4-door	Polaris 1000XP	Gas	\$150	\$325	\$900
Water Truck	Sterling, International	Diesel	\$240	\$700	\$2,000
2" Trash Pump	5.5 Hp gas	Gas	\$30	\$90	\$250
2" Water Pump		Electric	\$25	\$75	\$255
Delivery/Pick Up Charges					
Lincoln City Limits	\$200 one time fee. \$75/hour for items that fit in pickup bed.				
Out of City Limits	\$155 per hour (some exclusions apply)				

INVOICE

FROM:

Nicholas Dizona
 Real Property Appraisals
 5332 S 138th St Ste 300
 Omaha, NE 68137-2945

Telephone Number: (402) 391-4205 x2 Fax Number: (402) 391-1252

INVOICE NUMBER

R22Y095

DATES

Invoice Date: 06/02/2022

Due Date:

REFERENCE

Internal Order #:

Lender Case #:

Client File #:

FHA/VA Case #:

Main File # on form:

Other File # on form:

Federal Tax ID:

Employer ID:

TO:

Dodge County School District 0001

E-Mail:

Telephone Number:

Fax Number:

Alternate Number:

DESCRIPTION

Lender: Fremont Public Schools Client: Fremont Public Schools
 Purchaser/Borrower: Dodge County School District 0001
 Property Address: 319 W Washington St
 City: Fremont
 County: Dodge State: NE Zip: 68025
 Legal Description: JENSENS W1/2E1/2 (ALSO TL B = TL 22) BLK 20

FEES

AMOUNT

Appraisal

500.00

SUBTOTAL

500.00

PAYMENTS

AMOUNT

Check #: Date: Description:
 Check #: Date: Description:
 Check #: Date: Description:

SUBTOTAL

TOTAL DUE

\$ 500.00

APPRAISAL OF REAL PROPERTY



LOCATED AT
319 W Washington St
Fremont, NE 68025
JENSENS W1/2E1/2 (ALSO TL B = TL 22) BLK 20

FOR
Fremont Public Schools

AS OF
06/02/2022

BY
Nick Dizona
Real Property Appraisals
5332 S 138th St Ste 300
Omaha, NE 68137-2945
(402) 391-4205
ndizona@rpapc.com

Borrower	Dodge County School District 0001	File No.
Property Address	319 W Washington St	
City	Fremont	County Dodge State NE Zip Code 68025
Lender/Client	Fremont Public Schools	

TABLE OF CONTENTS



Cover Page 1

USPAP Identification Addendum 2

Summary of Salient Features 3

GP Residential 4

Comparable Photos 1-3 7

Subject Photos 8

Interior Photos 9

Interior Photos 10

Interior Photos 11

Building Sketch 12

Location Map 13

Location Map 14

Flood Map 15

License 16

EandO 17

Market Conditions Addendum to the Appraisal Report 18

Analytics Addendum 19

Analytics Addendum 20

USPAP ADDENDUM

File No. _____

Borrower	Dodge County School District 0001		
Property Address	319 W Washington St		
City	Fremont	County Dodge	State NE Zip Code 68025
Lender	Fremont Public Schools		

This report was prepared under the following USPAP reporting option:

- Appraisal Report** This report was prepared in accordance with USPAP Standards Rule 2-2(a).
- Restricted Appraisal Report** This report was prepared in accordance with USPAP Standards Rule 2-2(b).

Reasonable Exposure Time

My opinion of a reasonable exposure time for the subject property at the market value stated in this report is: less than 90 days

Additional Certifications

I certify that, to the best of my knowledge and belief:

- I have NOT performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I HAVE performed services, as an appraiser or in another capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment. Those services are described in the comments below.
- The statements of fact contained in this report are true and correct.
 - The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
 - Unless otherwise indicated, I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
 - I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
 - My engagement in this assignment was not contingent upon developing or reporting predetermined results.
 - My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
 - My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
 - Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
 - Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification (if there are exceptions, the name of each individual providing significant real property appraisal assistance is stated elsewhere in this report).

Additional Comments

'Intended Use / User': The Intended Use is to evaluate the subject property for mortgage financing, subject to the stated Scope of Work, Definition of Market Value, and reporting requirements of this appraisal report form. The Intended User of this appraisal report is the Lender/Client. No additional Intended Users are identified by the appraiser.

'Scope of Work' analysis: This is an Appraisal Report identifying the sales comparison approach, the cost approach, and the income approach and using the most applicable approach(s) to determine an opinion of market value for the subject property. Data has been reviewed from current listings in the market, closed comparable sales, rental trends, and market trends. Data sources available for verification include: multiple listing service(MLS), county records, contractors, real estate professionals, buyers and sellers, and other reliable sources. The appraisal process utilized the sources deemed necessary to complete a reliable report. The appraiser inspected the subject property and its surroundings and viewed all comparable properties.

'Market Value' definition: The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. (The Dictionary of Real Estate Appraisal 5th addition, 2010)

'Highest and Best Use' analysis: Highest and best use is defined as: "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value" (The Dictionary of Real Estate Appraisal 5th addition, 2010). This criteria has been applied to the highest and best use analysis of the subject property currently being appraised.

APPRAISER:



Signature: _____
 Name: Nick Dizona
 Date Signed: 06/21/2022
 State Certification #: CG280025
 or State License #: _____
 State: NE
 Expiration Date of Certification or License: 12/31/2023
 Effective Date of Appraisal: 06/02/2022

SUPERVISORY APPRAISER: (only if required)

Signature: _____
 Name: _____
 Date Signed: _____
 State Certification #: _____
 or State License #: _____
 State: _____
 Expiration Date of Certification or License: _____
 Supervisory Appraiser Inspection of Subject Property:
 Did Not Exterior-only from Street Interior and Exterior

SUMMARY OF SALIENT FEATURES

SUBJECT INFORMATION	Subject Address	319 W Washington St
	Legal Description	JENSENS W1/2E1/2 (ALSO TL B = TL 22) BLK 20
	City	Fremont
	County	Dodge
	State	NE
	Zip Code	68025
	Census Tract	9644.00
	Map Reference	23340
SALES PRICE	Sale Price	\$ 120,000
	Date of Sale	05/11/2022
CLIENT	Borrower	Dodge County School District 0001
	Lender/Client	Fremont Public Schools
DESCRIPTION OF IMPROVEMENTS	Size (Square Feet)	1,547
	Price per Square Foot	\$ 77.57
	Location	N;Res;FldZne
	Age	97
	Condition	C4
	Total Rooms	6
	Bedrooms	3
	Baths	1.0
APPRAISER	Appraiser	Nick Dizona
	Date of Appraised Value	06/02/2022
VALUE	Opinion of Value	\$ 122,000

RESIDENTIAL APPRAISAL REPORT

File No.:

SUBJECT	Property Address: 319 W Washington St		City: Fremont		State: NE		Zip Code: 68025	
	County: Dodge		Legal Description: JENSENS W1/2E1/2 (ALSO TL B = TL 22) BLK 20					
	Assessor's Parcel #: 270034321							
	Tax Year: 2021		R.E. Taxes: \$ 1,454.70		Special Assessments: \$ 0		Borrower (if applicable): Dodge County School District 0001	
ASSIGNMENT	Current Owner of Record: EDWARDS, VICKI A, (TRUSTEE)		Occupant: <input checked="" type="checkbox"/> Owner		<input type="checkbox"/> Tenant		<input type="checkbox"/> Vacant	
	Project Type: <input type="checkbox"/> PUD		<input type="checkbox"/> Condominium		<input type="checkbox"/> Cooperative		<input type="checkbox"/> Other (describe)	
	HOA: \$ 0		<input type="checkbox"/> per year		<input type="checkbox"/> per month			
	Market Area Name: JENSENS		Map Reference: 23340		Census Tract: 9644.00			
MARKET AREA DESCRIPTION	The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)							
	This report reflects the following value (if not Current, see comments): <input checked="" type="checkbox"/> Current (the Inspection Date is the Effective Date)							
	<input type="checkbox"/> Retrospective <input type="checkbox"/> Prospective							
	Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)							
SITE DESCRIPTION	Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)							
	Intended Use: Purchase							
	Intended User(s) (by name or type):							
	Client: Fremont Public Schools				Address:			
Appraiser: Nick Dizona								
Address: 5332 S 138th St Ste 300, Omaha, NE 68137-2945								
MARKET AREA DESCRIPTION	Location: <input type="checkbox"/> Urban		<input checked="" type="checkbox"/> Suburban		<input type="checkbox"/> Rural		Predominant Occupancy	
	Built up: <input type="checkbox"/> Over 75%		<input checked="" type="checkbox"/> 25-75%		<input type="checkbox"/> Under 25%		One-Unit Housing	
	Growth rate: <input type="checkbox"/> Rapid		<input checked="" type="checkbox"/> Stable		<input type="checkbox"/> Slow		PRICE AGE	
	Property values: <input type="checkbox"/> Increasing		<input checked="" type="checkbox"/> Stable		<input type="checkbox"/> Declining		(\$000) (yrs)	
	Demand/supply: <input checked="" type="checkbox"/> Shortage		<input type="checkbox"/> In Balance		<input type="checkbox"/> Over Supply		20 Low 11	
	Marketing time: <input checked="" type="checkbox"/> Under 3 Mos.		<input type="checkbox"/> 3-6 Mos.		<input type="checkbox"/> Over 6 Mos.		285 High 142	
							122 Pred 97	
							Other 25%	
							* To: _____	
							* To: _____	
Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Adjustments and trends in this report are based on the Submarket/Market data from the MC, conversations with agents/market participants, and graphs included at the end of this report. Graphs included with this report show the most recent trends in the Regional Area. See Market Addendum.								
SITE DESCRIPTION	Dimensions: Irregular		Site Area: 7,030 sf					
	Zoning Classification: AR		Description: Auto-Urban Residential					
	Zoning Compliance: <input checked="" type="checkbox"/> Legal		<input type="checkbox"/> Legal nonconforming (grandfathered)					
	<input type="checkbox"/> Illegal		<input type="checkbox"/> No zoning					
	Are CC&Rs applicable? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown		Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Ground Rent (if applicable) \$ /			
	Highest & Best Use as improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain)							
	Actual Use as of Effective Date: Single Family Residential				Use as appraised in this report: Single Family Residential			
	Summary of Highest & Best Use: Single Family Residential							
	Utilities		Public		Other		Provider/Description	
	Electricity		<input checked="" type="checkbox"/>		<input type="checkbox"/>		OPPD	
Gas		<input checked="" type="checkbox"/>		<input type="checkbox"/>		MUD		
Water		<input checked="" type="checkbox"/>		<input type="checkbox"/>		MUD		
Sanitary Sewer		<input checked="" type="checkbox"/>		<input type="checkbox"/>		City		
Storm Sewer		<input checked="" type="checkbox"/>		<input type="checkbox"/>		City		
Off-site Improvements		Type		Public		Private		
Street		Gravel/Dirt		<input checked="" type="checkbox"/>		<input type="checkbox"/>		
Curb/Gutter		Grass/Gravel		<input checked="" type="checkbox"/>		<input type="checkbox"/>		
Sidewalk		None		<input type="checkbox"/>		<input type="checkbox"/>		
Street Lights		None		<input type="checkbox"/>		<input type="checkbox"/>		
Alley		None		<input type="checkbox"/>		<input type="checkbox"/>		
Other site elements: <input checked="" type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input type="checkbox"/> Cul de Sac <input type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)								
FEMA Spec'l Flood Hazard Area <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		FEMA Flood Zone AE		FEMA Map # 31053C0395E		FEMA Map Date 01/02/2008		
Site Comments: Subject is assumed to be marketable and free and clear of all liens and encumbrances, easements and restrictions except those specifically addressed herein (if any).								
DESCRIPTION OF THE IMPROVEMENTS	General Description		Exterior Description		Foundation		Basement <input type="checkbox"/> None	
	# of Units 1 <input type="checkbox"/> Acc. Unit		Foundation Concrete/Avg		Slab Concrete		Area Sq. Ft. 400	
	# of Stories 1		Exterior Walls Siding/Good		Crawl Space		% Finished 0	
	Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/>		Roof Surface Asphalt/Good		Basement Partial		Ceiling	
	Design (Style) DT1.5;1.5 Story		Gutters & Dwnspts. Metal/Good		Sump Pump <input type="checkbox"/>		Walls	
	<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.		Window Type Sliders/Average		Dampness <input type="checkbox"/>		Floor Concrete	
	Actual Age (Yrs.) 97		Storm/Screens Yes/Average		Settlement None		Outside Entry None	
	Effective Age (Yrs.) 20				Infestation None		Cooling	
	Interior Description		Appliances		Attic <input type="checkbox"/> None		Amenities	
	Floors Various/Average		Refrigerator <input type="checkbox"/>		Stairs <input type="checkbox"/>		Fireplace(s) # 0	
Walls Drywall/Average		Range/Oven <input type="checkbox"/>		Drop Stair <input type="checkbox"/>		Patio Concrete		
Trim/Finish Wood/Average		Disposal <input type="checkbox"/>		Scuttle <input checked="" type="checkbox"/>		Deck None		
Bath Floor Various/Average		Dishwasher <input type="checkbox"/>		Doorway <input type="checkbox"/>		Porch Yes		
Bath Wainscot None		Fan/Hood <input type="checkbox"/>		Floor <input type="checkbox"/>		Fence Wood		
Doors Wood/Average		Microwave <input type="checkbox"/>		Heated <input type="checkbox"/>		Pool None		
		Washer/Dryer <input type="checkbox"/>		Finished <input type="checkbox"/>				
Finished area above grade contains:		6 Rooms		3 Bedrooms		1.0 Bath(s)		
Additional features: Typical		1,547 Square Feet of Gross Living Area Above Grade						
Describe the condition of the property (including physical, functional and external obsolescence): Subject is in overall average condition. Subject is a ranch home with 3 bedrooms and 1 bathrooms above grade. Subject has an unfinished basement. All utilities were on and operational at time of inspection. Subject was measured in accordance with ANSI standards.								

RESIDENTIAL APPRAISAL REPORT

File No.:

TRANSFER HISTORY	My research <input type="checkbox"/> did <input checked="" type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.	
	Data Source(s): MLS/County	
	1st Prior Subject Sale/Transfer	Analysis of sale/transfer history and/or any current agreement of sale/listing: <u>The subject was previously a transfer in 2013. Comparable #1 and #2 had no prior sales history. Comparable #3 was a prior arms length transaction in 2018 for \$122,000.</u>
	Date: 12/30/2013	
	Price: 0	
	Source(s): County Records	
2nd Prior Subject Sale/Transfer		
Date:		
Price:		
Source(s):		

SALES COMPARISON APPROACH TO VALUE (if developed) The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT			COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3											
Address	319 W Washington St Fremont, NE 68025			503 S H St Fremont, NE 68025			1049 W 1st St Fremont, NE 68025			734 E 3rd St Fremont, NE 68025											
Proximity to Subject				0.02 miles E			0.53 miles NW			0.73 miles NE											
Sale Price	\$ 120,000			\$ 120,000			\$ 100,000			\$ 170,000											
Sale Price/GLA	\$ 77.57 /sq.ft.			\$ 76.38 /sq.ft.			\$ 81.70 /sq.ft.			\$ 99.94 /sq.ft.											
Data Source(s)	Inspection			MLS#22129578 DOM;3			MLS#22202365 DOM;18			MLS#22127891 DOM;8											
Verification Source(s)	MLS/County			MLS/County			MLS/County			MLS/County											
VALUE ADJUSTMENTS	DESCRIPTION			DESCRIPTION			+(-) \$ Adjust.			DESCRIPTION			+(-) \$ Adjust.								
Sales or Financing Concessions	ArmLth 0			ArmLth Cash;0			ArmLth Conv;0			ArmLth Conv;0											
Date of Sale/Time	05/11/2022			01/14/2022			03/25/2022			12/28/2021											
Rights Appraised	Fee Simple			Fee Simple			Fee Simple			Fee Simple											
Location	N;Res;FldZne			N;Res;FldZne			N;Res;FldZne			N;Res			-5,000								
Site	7,030 sf			9030 sf			7980 sf			7840 sf											
View	N;Res;School			N;Res;School			N;Res			-2,000			N;Res			-2,000					
Design (Style)	DT1.5;1.5 Story			DT1.5;1.5 Story			DT1.5;1.5 Story			DT1.5;1.5 Story											
Quality of Construction	Q4			Q4			Q4			Q4											
Age	97			97			112			95			0								
Condition	C4			C3			-3,000			C4			C3			-5,000					
Above Grade	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths			
Room Count	6	3	1.0	7	3	1.1	-1,000	6	4	1.0	-2,000	6	4	1.0	-2,000	6	4	1.0	-2,000		
Gross Living Area	1,547 sq.ft.			1,571 sq.ft.						1,224 sq.ft.			+8,000			1,701 sq.ft.			-4,000		
Basement & Finished Rooms Below Grade	400sf0sfin			690sf0sfin			0			696sf0sfin			0			1118sf0sfin			-3,590		
Functional Utility	Average			Average						Average						Average					
Heating/Cooling	GFA/Central			GFA/Central						GFA/Central						GFA/Central					
Energy Efficient Items	Typical			Typical						Typical						Typical					
Garage/Carport	1gd1dw			None			+2,000			None			+2,000			2gd2dw			-2,000		
Porch/Patio/Deck	Yes/Yes/No			Yes/Yes/No						Yes/Yes/No						Yes/Yes/No					
Net Adjustment (Total)				<input type="checkbox"/> + <input checked="" type="checkbox"/> -			\$ -2,000			<input checked="" type="checkbox"/> + <input type="checkbox"/> -			\$ 6,000			<input type="checkbox"/> + <input checked="" type="checkbox"/> -			\$ -23,590		
Adjusted Sale Price of Comparables				Net 1.7 %						Net 6.0 %						Net 13.9 %					
				Gross 5.0 %			\$ 118,000			Gross 14.0 %			\$ 106,000			Gross 13.9 %			\$ 146,410		

Summary of Sales Comparison Approach The subject is being sold FSBO, subject was not listed in MLS or any FSBO sites. The subject is currently pending in the MLS, with a closing date of 06/30/2022. Sale contingent upon Fremont school boards ratification of purchase agreement. All sales are located within a 1 mile radius of the subject and have sold within the past 12 months. Sales chosen represent the most comparable properties as of the effective date of this appraisal. Factors to my opinion of value include; view/location, condition, above and below grade sf/room count, garages, patio/deck. The subject is located in an established neighborhood and the market showed little impact on value with site sizes. All comparables were given weight in my opinion of value, with the most weight given to comparable one due to its proximity to the subject and similar view/location.

Indicated Value by Sales Comparison Approach \$ **122,000**

Comparable Photo Page

Borrower	Dodge County School District 0001			
Property Address	319 W Washington St			
City	Fremont	County Dodge	State NE	Zip Code 68025
Lender/Client	Fremont Public Schools			



Comparable 1

503 S H St	
Prox. to Subject	0.02 miles E
Sale Price	120,000
Gross Living Area	1,571
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	1.1
Location	N;Res;FldZne
View	N;Res;School
Site	9030 sf
Quality	Q4
Age	97



Comparable 2

1049 W 1st St	
Prox. to Subject	0.53 miles NW
Sale Price	100,000
Gross Living Area	1,224
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	1.0
Location	N;Res;FldZne
View	N;Res
Site	7980 sf
Quality	Q4
Age	112



Comparable 3

734 E 3rd St	
Prox. to Subject	0.73 miles NE
Sale Price	170,000
Gross Living Area	1,701
Total Rooms	6
Total Bedrooms	4
Total Bathrooms	1.0
Location	N;Res
View	N;Res
Site	7840 sf
Quality	Q4
Age	95

Subject Photo Page

Borrower	Dodge County School District 0001				
Property Address	319 W Washington St				
City	Fremont	County	Dodge	State	NE Zip Code 68025
Lender/Client	Fremont Public Schools				



Subject Front

319 W Washington St
Sales Price 120,000
Gross Living Area 1,547
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 1.0
Location N;Res;FldZne
View N;Res;School
Site 7,030 sf
Quality Q4
Age 97



Subject Rear



Subject Street

Exterior/Interior Photos

Borrower	Dodge County School District 0001			
Property Address	319 W Washington St			
City	Fremont	County Dodge	State NE	Zip Code 68025
Lender/Client	Fremont Public Schools			



Front



Side



Driveway



Rear



Det. Garage



Rear/Patio



Side/Patio



Side



Front



Street



Front



AC



Side Entry/Hallway



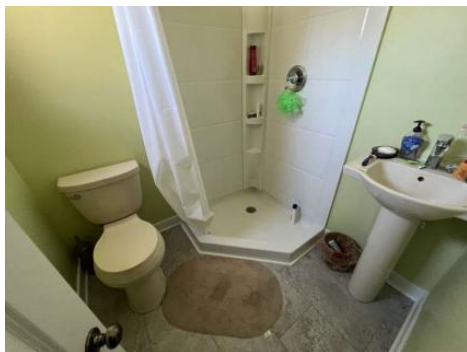
Kitchen



Kitchen

Interior Photos

Borrower	Dodge County School District 0001				
Property Address	319 W Washington St				
City	Fremont	County Dodge	State NE	Zip Code 68025	
Lender/Client	Fremont Public Schools				



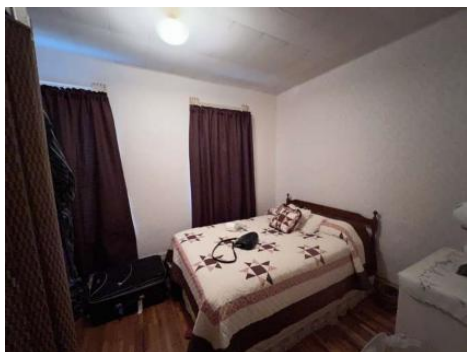
Bathroom 1



Dining



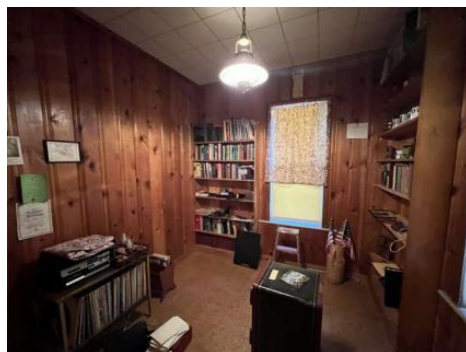
Dining



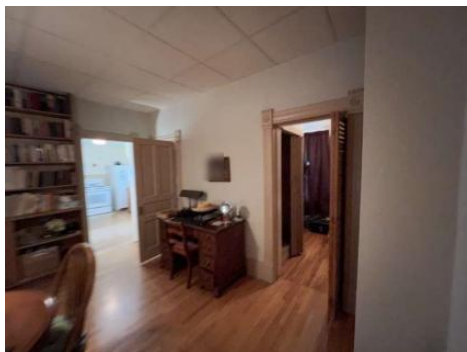
Bedroom 1



Living/Main Entry



Office



Dining



Stairs to Second



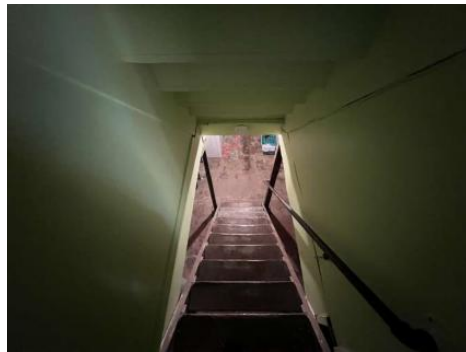
Bedroom 2



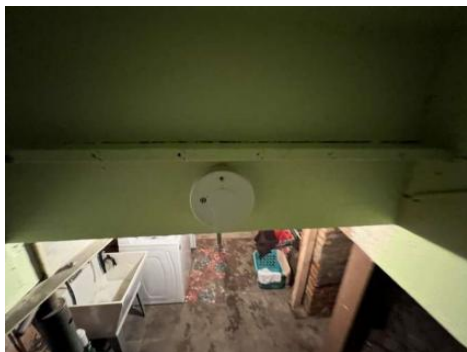
Bedroom 2



Bedroom 3



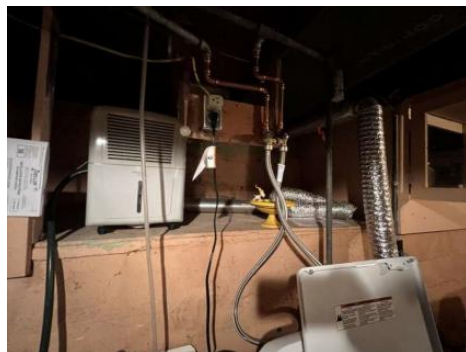
Stairs to Below Grade



Smoke Detector



Laundry



Below Grade

Interior Photos

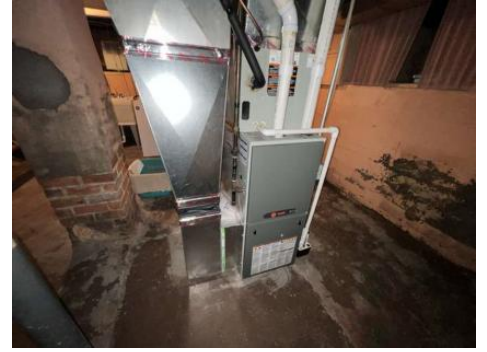
Borrower	Dodge County School District 0001				
Property Address	319 W Washington St				
City	Fremont	County	Dodge	State	NE Zip Code 68025
Lender/Client	Fremont Public Schools				



Utility/Electric



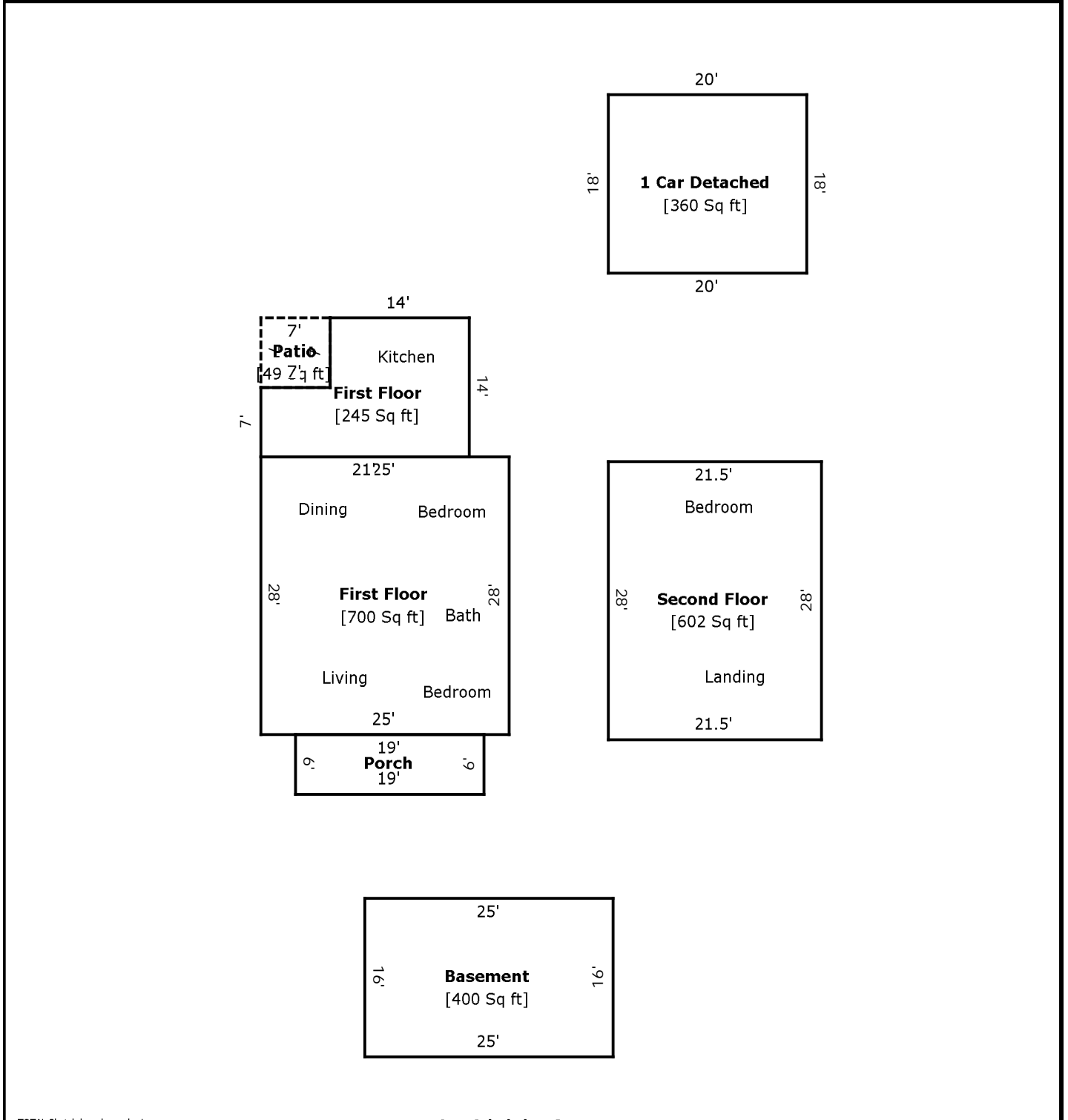
Below Grade



Utility

Building Sketch

Borrower	Dodge County School District 0001						
Property Address	319 W Washington St						
City	Fremont	County	Dodge	State	NE	Zip Code	68025
Lender/Client	Fremont Public Schools						



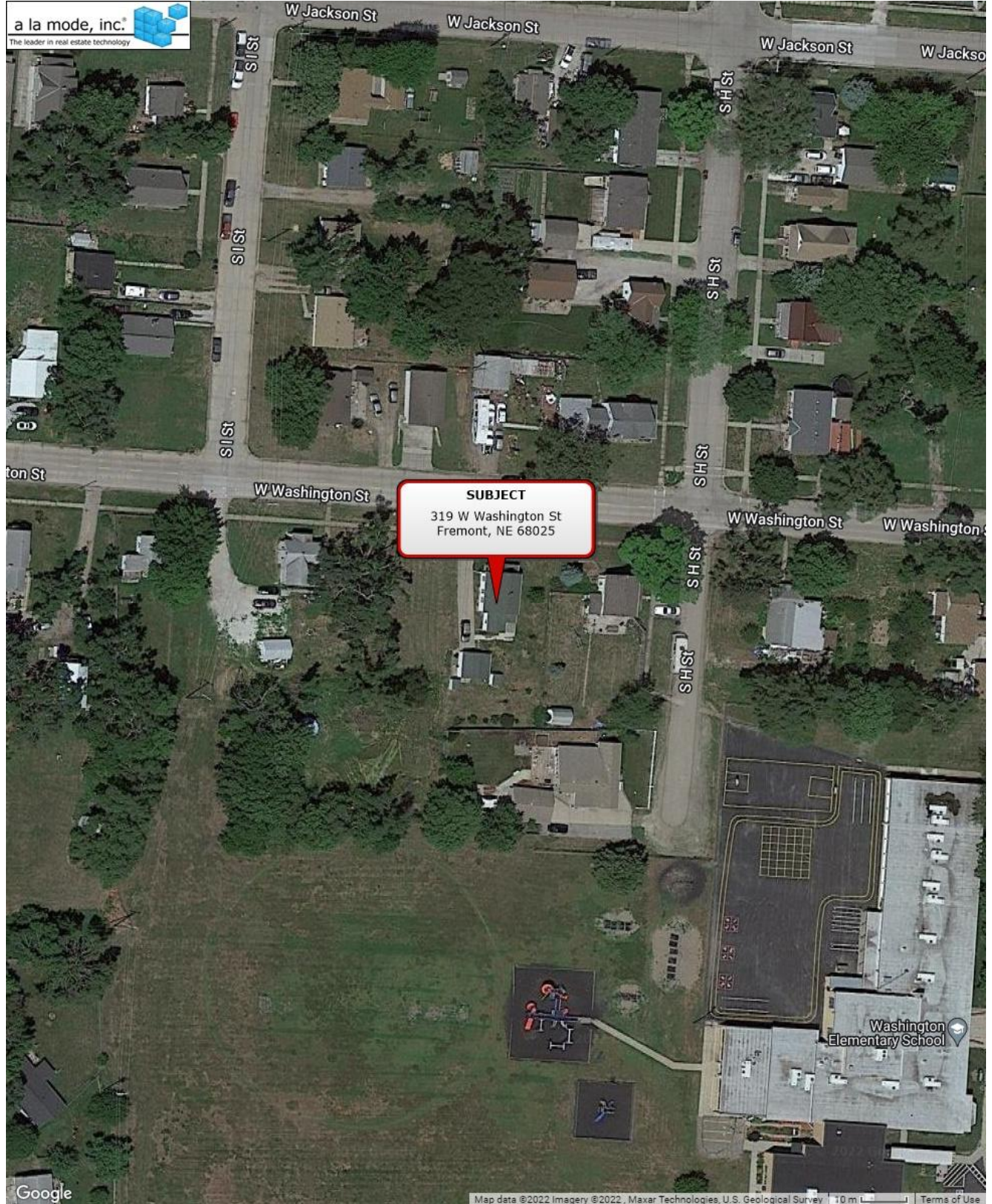
TOTAL Sketch by a la mode, inc.

Area Calculations Summary

Living Area	Calculation Details	
First Floor	700 Sq ft	$25 \times 28 = 700$
First Floor	245 Sq ft	$14 \times 14 = 196$ $7 \times 7 = 49$
Second Floor	602 Sq ft	$21.5 \times 28 = 602$
Total Living Area (Rounded):	1547 Sq ft	
Non-living Area		
Porch	114 Sq ft	$19 \times 6 = 114$
1 Car Detached	360 Sq ft	$18 \times 20 = 360$
Patio	49 Sq ft	$7 \times 7 = 49$
Basement	400 Sq ft	$16 \times 25 = 400$

Location Map

Borrower	Dodge County School District 0001				
Property Address	319 W Washington St				
City	Fremont	County	Dodge	State	NE Zip Code 68025
Lender/Client	Fremont Public Schools				



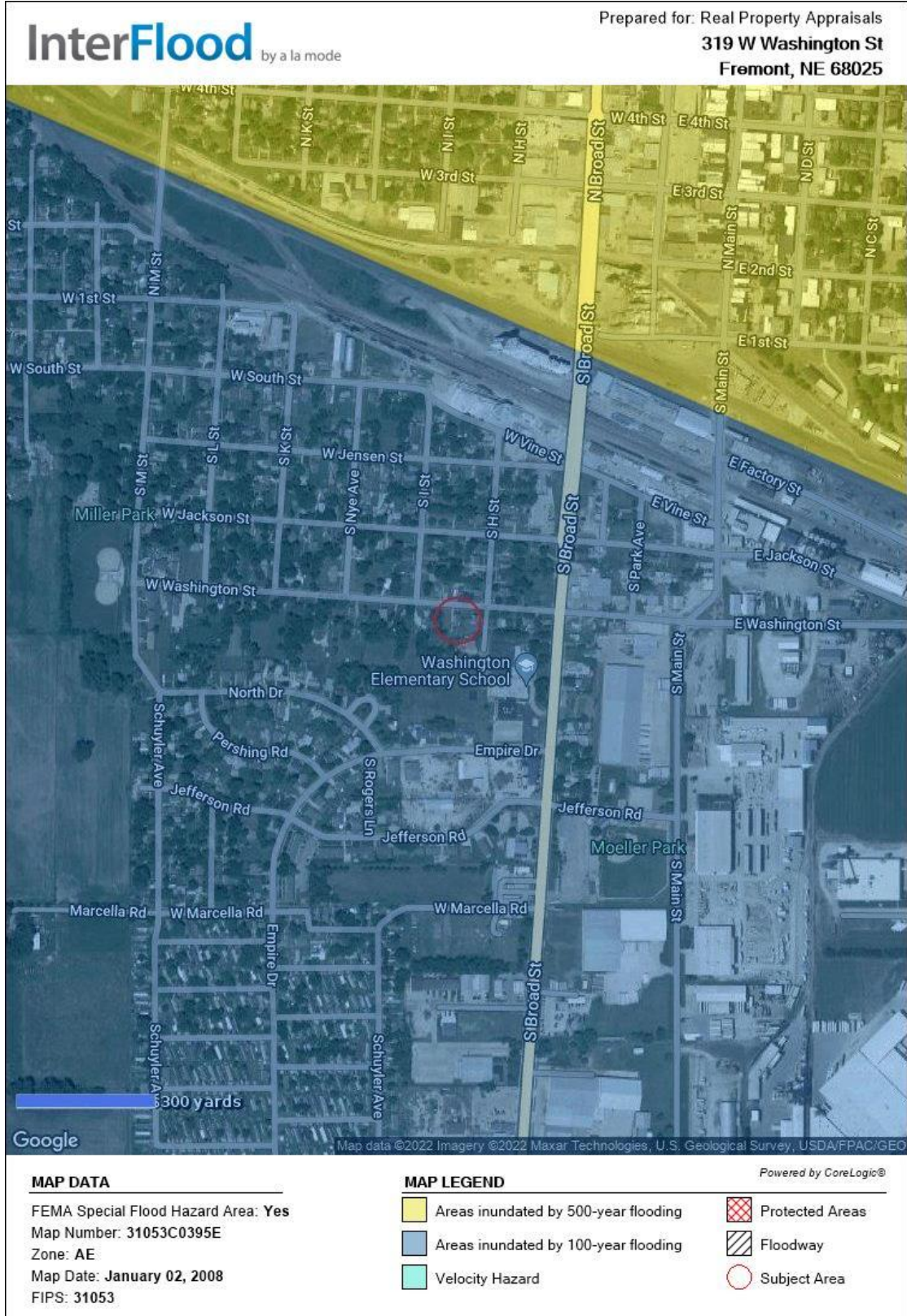
Location Map

Borrower	Dodge County School District 0001			
Property Address	319 W Washington St			
City	Fremont	County Dodge	State NE	Zip Code 68025
Lender/Client	Fremont Public Schools			



Flood Map

Borrower	Dodge County School District 0001						
Property Address	319 W Washington St						
City	Fremont	County	Dodge	State	NE	Zip Code	68025
Lender/Client	Fremont Public Schools						



State of Nebraska Real Property Appraiser Board



Hereby certifies that: NICHOLAS J DIZONA

REAL PROPERTY APPRAISALS
5332 S 138TH ST STE 300
OMAHA, NE 68137-2945

Is credentialed in the State of Nebraska as a:

Certified General Real Property Appraiser

Holding credential number: CG280025

Effective Date: Jan 01, 2022 Expiration Date: Dec 31, 2023

Nebraska Real Property Appraiser Board Director:

A handwritten signature in black ink, reading "Tyler N. Rohlf", is written over a horizontal line.

All address changes, business or residence, must be reported to the Real Property Appraiser Board immediately.

This Credentialing Card is proof that such person is credentialed under the Real Property Appraiser Act unless credential has been canceled, surrendered, suspended, or revoked.

Nebraska Real Property Appraiser Board
301 Centennial Mall South, First Floor PO Box 94963
Lincoln, Nebraska 68509-4963
Phone: 402-471-9015 Fax: 402-471-9017 <https://appraiser.ne.gov/>

Administrative Identification Number:	9652-2022	Registration Fee Paid:	\$550.00
Random Fingerprint Audit Program Fee Paid:	\$10.00	Federal Registry Fee Paid:	\$80.00



301 E. Fourth Street, Cincinnati, OH 45202

DECLARATIONS
for
REAL ESTATE APPRAISERS
ERRORS & OMISSIONS INSURANCE POLICY

THIS IS BOTH A CLAIMS MADE AND REPORTED INSURANCE POLICY.

THIS POLICY APPLIES TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED
AND REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD.

Insurance is afforded by the company indicated below: (A capital stock corporation)

[X] Great American Assurance Company

Note: The Insurance Company selected above shall herein be referred to as the Company.

Policy Number: RAP4117001-21 Renewal of: RAP4117001-20
Program Administrator: Herbert H. Landy Insurance Agency Inc.
100 River Ridge Drive, Suite 301 Norwood, MA 02062

Item 1. Named Insured: Nick Dizona

Item 2. Address: 5332 S 138th St. #300
City, State, Zip Code: Omaha, NE 68137

Item 3. Policy Period: From 11/01/2021 To 11/01/2022
(Both dates at 12:01 a.m. Standard Time at the address of the Named Insured as stated in Item 2.)

Item 4. Limits of Liability:

- A. \$ 1,000,000 Damages Limit of Liability - Each Claim
B. \$ 1,000,000 Claim Expenses Limit of Liability - Each Claim
C. \$ 2,000,000 Damages Limit of Liability - Policy Aggregate
D. \$ 2,000,000 Claim Expenses Limit of Liability - Policy Aggregate

Item 5. Deductible (Inclusive of Claim Expenses):

- A. \$ 0.00 Each Claim
B. \$ 0.00 Aggregate

Item 6. Premium: \$ 764.00

Item 7. Retroactive Date (if applicable): 11/08/2009

Item 8. Forms, Notices and Endorsements attached:

D42100 (03/15) D42300 NE (05/13) IL7324 (08/12)
D42402 (05/13) D42412 (03/17) D42413 (06/17) D42414 (08/19)

[Signature]
Authorized Representative

Market Conditions Addendum to the Appraisal Report

File No.

The purpose of this addendum is to provide the lender/client with a clear and accurate understanding of the market trends and conditions prevalent in the subject neighborhood. This is a required addendum for all appraisal reports with an effective date on or after April 1, 2009.

Property Address **319 W Washington St** City **Fremont** State **NE** ZIP Code **68025**

Borrower **Dodge County School District 0001**

Instructions: The appraiser must use the information required on this form as the basis for his/her conclusions, and must provide support for those conclusions, regarding housing trends and overall market conditions as reported in the Neighborhood section of the appraisal report form. The appraiser must fill in all the information to the extent it is available and reliable and must provide analysis as indicated below. If any required data is unavailable or is considered unreliable, the appraiser must provide an explanation. It is recognized that not all data sources will be able to provide data for the shaded areas below; if it is available, however, the appraiser must include the data in the analysis. If data sources provide the required information as an average instead of the median, the appraiser should report the available figure and identify it as an average. Sales and listings must be properties that compete with the subject property, determined by applying the criteria that would be used by a prospective buyer of the subject property. The appraiser must explain any anomalies in the data, such as seasonal markets, new construction, foreclosures, etc.

Inventory Analysis	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend		
Total # of Comparable Sales (Settled)	38	25	15	<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input checked="" type="checkbox"/> Declining
Absorption Rate (Total Sales/Months)	6.33	8.33	5.00	<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input checked="" type="checkbox"/> Declining
Total # of Comparable Active Listings	18	12	13	<input checked="" type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Months of Housing Supply (Total Listings/Ab.Rate)	2.84	1.44	2.60	<input type="checkbox"/> Declining	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Median Sale & List Price, DOM, Sale/List %	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend		
Median Comparable Sale Price	\$164,500	\$160,000	\$100,000	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining
Median Comparable Sales Days on Market	8	12	7	<input type="checkbox"/> Declining	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Median Comparable List Price	\$159,450	\$99,500	\$165,000	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining
Median Comparable Listings Days on Market	28	17	20	<input checked="" type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Median Sale Price as % of List Price	100.00%	100.11%	100.00%	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining
Seller-(developer, builder, etc.)paid financial assistance prevalent?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			<input type="checkbox"/> Declining	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Increasing

Explain in detail the seller concessions trends for the past 12 months (e.g., seller contributions increased from 3% to 5%, increasing use of buydowns, closing costs, condo fees, options, etc.). **We are seeing sellers offering partial closing costs in some cases and providing limited financing options.**

Are foreclosure sales (REO sales) a factor in the market? Yes No If yes, explain (including the trends in listings and sales of foreclosed properties).

As reported in the Omaha Area Board of REALTORS MLS, out of 92 properties either listed or sold, 1 (1.09%) were indicated as a foreclosure or short sale. Out of 78 closed sales the past 12 months, 1 (1.28%) were foreclosures or short sales. In the prior 7-12 months, 0 of 38 sales (0.00%) were foreclosures or short sales. In the prior 4-6 months, 0 of 25 sales (0.00%) were foreclosures or short sales. In the past 3 months, 1 of 15 sales (6.67%) were foreclosures or short sales. As of 06/20/2022, 0 of 13 active listings (0.00%) are foreclosures or short sales.

Cite data sources for above information. **The Market Conditions Addenda was completed with data from Omaha Area Board of REALTORS MLS with an effective date of 06/20/2022.**

Summarize the above information as support for your conclusions in the Neighborhood section of the appraisal report form. If you used any additional information, such as an analysis of pending sales and/or expired and withdrawn listings, to formulate your conclusions, provide both an explanation and support for your conclusions.

This analysis is based on all comparable properties within 1 mile of the subject for the last year. Sales Prices are currently stable. We would expect to see these numbers to increase as we are entering the spring/summer months. Due to the Covid pandemic, as research shows, values/prices are on the increase with 2021/22. Currently there are fewer homes sold than previous years which has caused an increase in prices due to higher demand than supply. It is noted that within the 1 mile radius boundary of the subject are homes considered inferior/superior to the subject due to lot locations, quality of build, utility, etc., these properties were not included in our analysis.

If the subject is a unit in a condominium or cooperative project, complete the following: Project Name:

Subject Project Data	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend		
Total # of Comparable Sales (Settled)				<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Absorption Rate (Total Sales/Months)				<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Total # of Active Comparable Listings				<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Months of Unit Supply (Total Listings/Ab.Rate)				<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing

Are foreclosure sales (REO sales) a factor in the project? Yes No If yes, indicate the number of REO listings and explain the trends in listings and sales of foreclosed properties.

Summarize the above trends and address the impact on the subject unit and project.

Signature 	Signature
Appraiser Name Nick Dizona	Supervisory Appraiser Name
Company Name Real Property Appraisals	Company Name
Company Address 5332 S 138th St Ste 300, Omaha, NE 68137-2945	Company Address
State License/Certification # CG280025 State NE	State License/Certification # State
Email Address ndizona@rpapc.com	Email Address

MARKET RESEARCH & ANALYSIS

CONDO/CO-OP PROJECTS

APPRAISER

Analytics Addendum

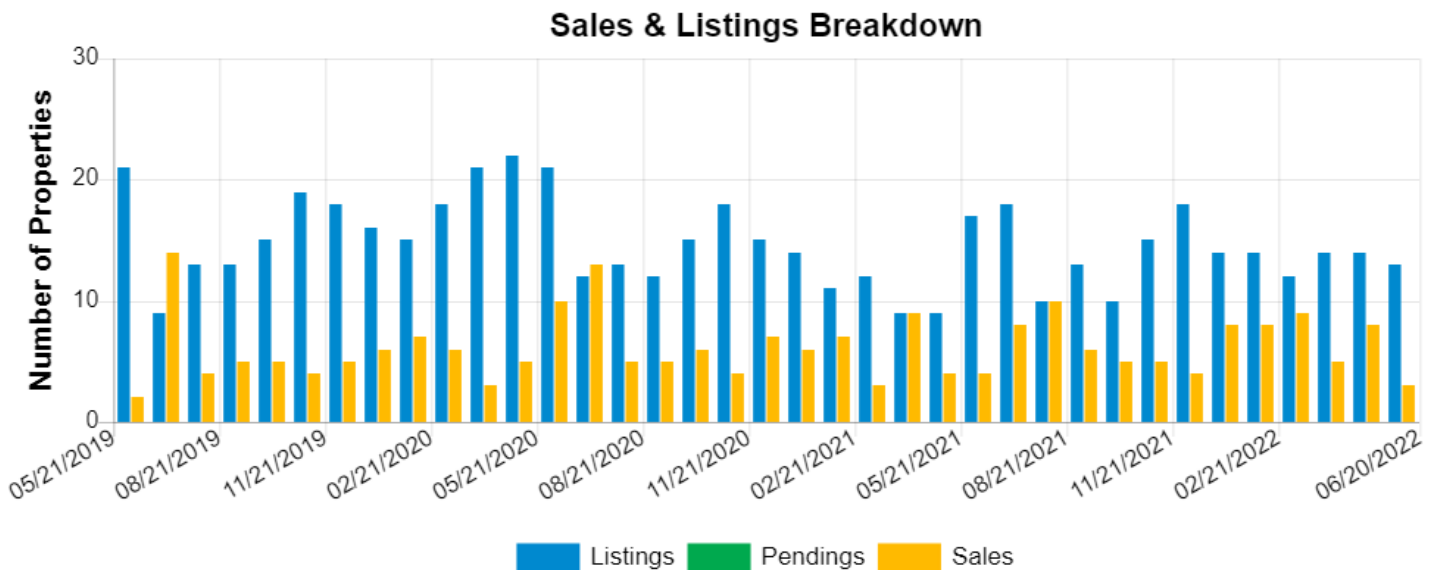
Borrower	Dodge County School District 0001				
Property Address	319 W Washington St				
City	Fremont	County	Dodge	State	NE
Lender/Client	Fremont Public Schools	Zip Code	68025		



This analysis of prices in the subject market from 06-11-2019 to 06-01-2022 yields a price range of \$96,073 to \$205,541 for properties in the subject market as of 06-20-2022.



This analysis of listing prices in the subject market from 03-04-2019 to 06-10-2022 shows a range of \$100,906 to \$209,114 for a likely sale on 06-20-2022.

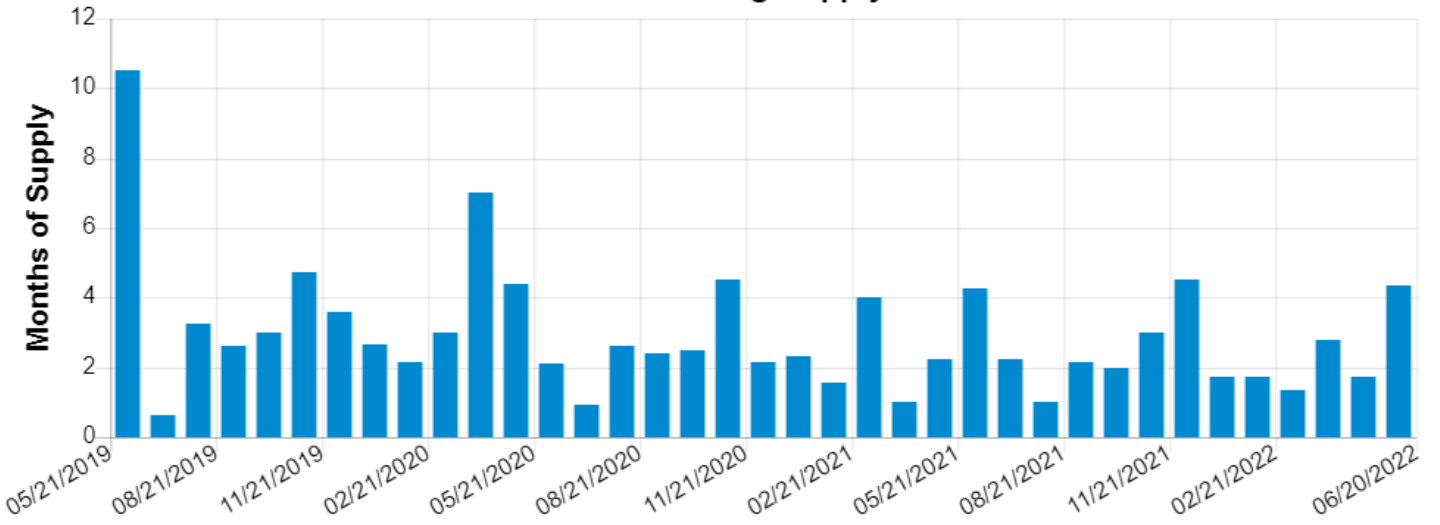


For each month from 05-21-2019 to 06-20-2022 this chart shows the number of properties for both sales and listings in the subject market.

Analytics Addendum

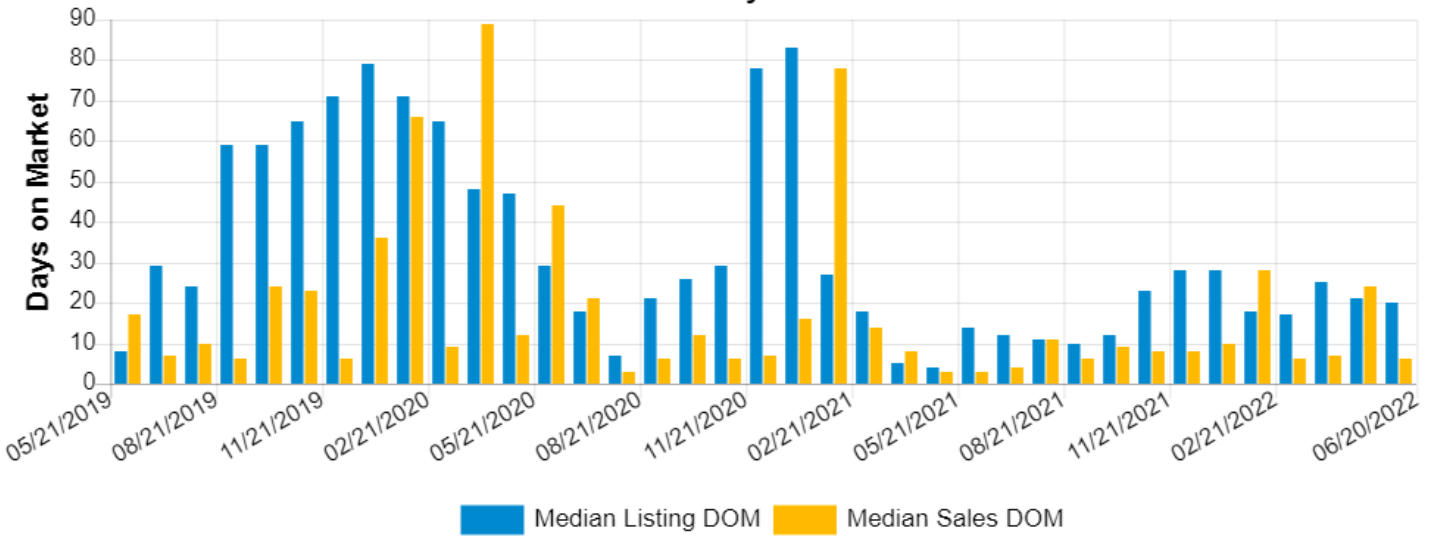
Borrower	Dodge County School District 0001				
Property Address	319 W Washington St				
City	Fremont	County Dodge	State NE	Zip Code 68025	
Lender/Client	Fremont Public Schools				

Housing Supply



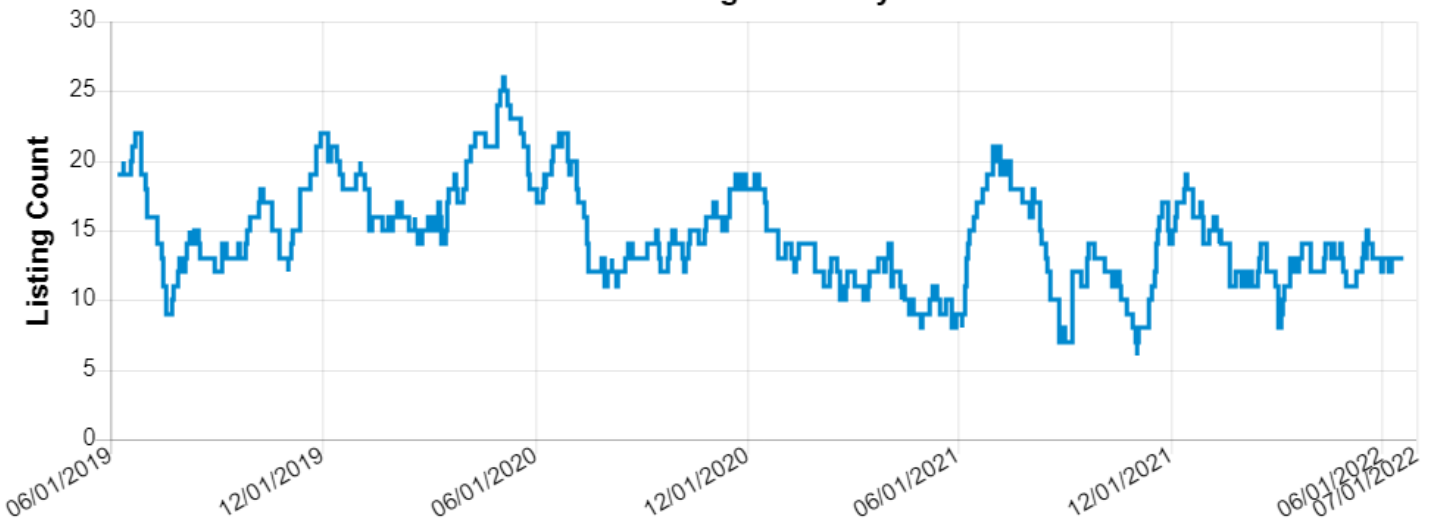
This graph demonstrates the months of housing supply per month by taking the active number of listings during that month and dividing by the average number of sales per month over the 12 months trailing.

Median Days on Market



This chart shows the median days on market for sales and active listings during each month starting 05-21-2019 through 06-20-2022.

Listing Inventory



The listing inventory chart displays the number of properties actively for sale each day in the subject market from 06-07-2019 to 06-20-2022.



THIS IS A LEGALLY BINDING CONTRACT: IF NOT UNDERSTOOD, SEEK LEGAL ADVICE

PURCHASE AGREEMENT

DON PETERSON & ASSOCIATES REAL ESTATE CO. (Broker) REALTORS® May 11, 2022 (Date)

1. Property. The undersigned, as buyer, agrees to purchase the following property:

Address: 319 W Washington St, Fremont, NE 68025-5556

Legal Description:

Jensens W 1/2E 1/2 (Also TL B + TL 22) Block 20 Dodge County, Fremont NE 68025

(Property)

Including all fixtures and equipment permanently attached to Property. The only personal property included is as follows:

2. Conveyance of Title. Seller agrees to convey marketable title to Buyer or Buyer's Nominee by warranty deed or free and clear of all liens, encumbrances, special assessments levied or assessed and subject to all easements and restrictions of record. Seller agrees to pay any assessments for items such as paving, curbing, sidewalk or utilities previously constructed, now under construction, or ordered to be constructed by public authority but not yet assessed as of the date of this agreement. The documentary stamp tax shall be paid by Seller.

3. Price and Financial Terms. Buyer agrees to pay \$ 120,000.00, on the following terms: an earnest money deposit of \$ 5,000.00 at this time as shown by the receipt herein. If paid by check, it will be cashed upon acceptance. The earnest money will be made payable and delivered to [] Broker [X] Escrow Agent on acceptance. All monies shall be deposited in a trust account, to be held until the time of closing or until transferred to an escrow agent by agreement of Buyer and Seller; balance to be paid as shown in Paragraph(s) # a following:

- (a) All Cash: Balance shall be paid in cash, cashier's check or certified funds at time of delivery of deed, no financing required.
(b) Conditional Upon New Loan: Balance shall be paid in cash, or by cashier's check or certified funds at time of delivery of deed, contingent upon Buyer's ability to obtain a loan, secured by first mortgage or deed of trust, on Property in the amount of \$
The loan is to be (describe loan): Type, at a rate not to exceed % for a term of years.
(c) Seller Contribution. At closing Seller shall pay or reimburse Buyer for the payment of Buyer's loan fees, closing costs and/or prepaid items as allowed by lender up to \$ or % of purchase price.
(d) Seller Financing or Loan Assumption: See Other Provisions, Paragraph 4, below.

Buyer agrees to apply for the loan within 5 days of acceptance of this offer and agrees to sign all papers, pay all loan expenses, and establish escrow reserves as required. If said loan is not approved within n/a days from date of acceptance hereof, and if buyer has made reasonable efforts to obtain the loan, this offer is null and void and the earnest money is to be returned to buyer, provided, that if lender requires more time to process the application, the time limit shall be extended until lender has, in the normal course of business, advised either approval or rejection. Buyer hereby authorizes the lender to provide buyer's agent and seller's agent with information regarding the above application and approval or denial of that application. If the original loan application is denied, buyer authorizes and instructs the lender to notify the buyer's agent and seller's agent of that denial and the reasons thereof in writing. Upon notification of denial, the contract shall be void and the deposit will be refunded to buyer, unless seller and buyer mutually agree, in writing, within five (5) days of receipt of notification of loan denial that either an additional loan application will be made or that additional loan information will be submitted to the original lender. Buyer authorizes the release of financing information on the purchase of this property to the Multiple Listing Service. Any required flood insurance shall be obtained by buyer before closing.

03/2018

Buyer's Initials BD /

Seller's Initials VC /

Page 1 of 6

4. Other Provisions. Property is being sold AS IS. Contingent upon Fremont Public School Board ratification of purchase agreement before the closing date.

5. Addenda attached. The attached addenda are made a part of this Purchase Agreement. (Please Initial) (Seller ____/____) (Buyer ____/____) (List Addenda):

6. Real Estate Taxes and Prorations. Seller to pay any levied assessment. Seller to pay any assessments for paving, curb, sidewalk or other public improvement or utility previously constructed, or ordered, or required to be constructed by public authority, but not yet assessed, unless otherwise provided in Other Provisions, Paragraph 4, above. Seller shall pay all taxes for the years prior to the year of closing. Taxes for the year of closing together with interest shall be prorated to the date of closing. Taxes shall be prorated based upon the county assessor's valuation and the most recently certified mill levy, at the date of closing or possession, as follows:

[X] Dodge or Other Non-Metro County Taxes: All consolidated RE taxes for tax year in which closing takes place.

[] Douglas or Sarpy County Taxes: All consolidated RE taxes which become delinquent in the year of closing shall be treated as though all are current taxes, and those taxes prorated.

7. Rents, Deposits and Leases, if Rented. All rents shall be current and shall be prorated to date of closing. All tenant deposits and leases shall be assigned to Buyer. Seller shall provide copies of all current leases to Buyer.

8. Title Insurance. Seller shall furnish a current title insurance commitment to Buyer as soon as practical. The cost of any title insurance policies and endorsements shall be equally divided between Buyer and Seller. Buyer shall deliver to Seller a notice setting forth the defects in the title, if any. If title defects are found, Seller shall attempt to correct the defects within a reasonable time. If title defects are not cured within a reasonable time, the Buyer may rescind this Agreement and the earnest deposit shall be refunded to Buyer. In accordance with federal laws and regulations, Buyer hereby directs the title insurance work to:

[X] Dodge/Douglas County Title and Escrow Co. or [] other

If work is completed by Dodge/Douglas County Title and Escrow Co., then this is notification that Don Peterson & Associates has an ownership interest in that firm and may receive financial compensation.

9. Escrow Closing. Buyer and Seller acknowledge and understand the closing of the sale shall be handled by an escrow agent. The broker is authorized to transfer the earnest deposit or any other funds it received and the original purchase agreement to said escrow agent. After said transfer, broker shall have no further responsibility or liability to buyer or seller for the accounting of said funds.

Escrow agents charge will be \$500 or current fee schedule and shall be divided equally between seller and buyer, unless buyer is obtaining a loan that does not allow Buyer to pay for such cost (such as VA) in which case such charge shall be paid by Seller.

Buyer appoints [X] Dodge/Douglas County Title and Escrow Co.

[] Other

10. Possession and Closing. Closing of the sale shall be on or before Sept 1 2022 (Date). Possession of Property shall be given on or before closing date (Date). This agreement shall in no manner be construed to convey Property or to give any right of possession. Buyer shall have the right to make a final inspection of Property prior to closing to ascertain that all conditions of this agreement have been met.

03/2018 Buyer's Initials BD

Seller's Initials VE

~~11. Homeowner's Association and Protective Covenants.~~ Buyer acknowledges that the Property may be subject to protective covenants that govern Buyer's use of the Property, which may be enforced by the homeowner's association or its members. Buyer can obtain a copy of the protective covenants from the designated title insurance company. Seller shall pay all homeowner's and neighborhood association assessments levied and due as of closing. Homeowner's or neighborhood association dues shall be prorated to the date of closing. Buyer shall be responsible for all future homeowner's or neighborhood association dues, if any.

~~12. SID.~~ Buyer understands that this property is located within SID # _____ and acknowledges a receipt of the most recently filed SID statement.

13. Utilities. Buyer and Seller agree that the date of closing or possession, whichever is first, is the utility transfer date. Both parties will complete the necessary paperwork with utility companies before this date and tender deposit, if required.

~~14. Survey.~~ Buyer is aware of the availability of having a survey to determine the property limits, measurements, building locations, encroachments from adjoining lands, and registered Easements which may affect the property. The Buyer agrees to pay for survey chosen, if any, or any Improvement Location Report required by the lender.

15. Inspections.

A. Inspection Addendum. If checked, an Inspection Addendum is attached hereto and made a part of this contract and, the Buyer and Seller hereby agree to abide with the terms and conditions contained therein. Home Inspection is waived DS (initial)

B. Lead-Based Paint Addendum. If checked, the house upon the property was built prior to 1978 and attached hereto is a statement, disclosure and acknowledgement regarding lead based paint which is incorporated herein by this reference.

~~C. Termite Inspection.~~ Buyer requests a termite and wood destroying insect inspection of the dwelling and garage thereon at Buyer's expense (except should Buyer obtain a VA Loan, the expense shall be paid by the Seller). Should evidence of termites or wood destroying insects be found, the property shall be treated at Seller's expense by a commercially licensed applicator who has met the certification requirement of the Nebraska Pesticide Act for treatment of termites and wood destroying insects. Buyer agrees to accept the treated property. If visible evidence of previously treated infestation which is now inactive is found, treatment shall not be required. Should damage from such insects be found, the damage shall be corrected at seller's expense. However, if the cost required for repairs exceeds 1% of the purchase price, and seller does not elect to pay the cost in excess of such amount, Buyer shall have the option of declaring this Agreement null and void and to the return of the earnest money.

~~D. Property Condition.~~ This offer is based upon buyer's personal inspection or investigation of the premises and not upon any representation or warranties of condition by the seller, seller's agent or buyer's agent. Buyer acknowledges receipt of Seller Property Condition Disclosure Statement as required by Nebraska law. Seller represents to the best of seller's knowledge, information and belief, there are no latent defects in the property nor any conditions present or existing with respect to the property which may give rise to or create environmental hazards or liabilities and there are no enforcement actions pending or threatened with respect thereof. Seller agrees to maintain, until delivery of possession, the heating, air conditioning, water heater, sewer, plumbing and electrical systems, any built-in appliances, and personal property included in the sale, in working condition, unless otherwise noted in writing or in the Seller Property Condition Disclosure Statement and shall maintain the lawn and snow removal from walks and driveway until closing. Seller agrees to install at Seller's expense any smoke detectors and carbon monoxide alarms required by law.

If finished square footage, age of the Property, location of property lines, lot size, condition of improvements, designated school or school district or other specific requirements of Buyer, are important to Buyer's decision to purchase, Broker recommends that the Buyer make or procure independent investigation of such items and condition this offer on sufficient verification thereof.

16. Risk of Loss. Risk of loss to the property is upon the seller until title has been conveyed or placed in escrow under land contract at closing, and if prior to closing buildings on the property are materially damaged by fire, explosion or any other cause, buyer shall have the right to rescind this agreement and obtain refund of the earnest money paid hereunder.

17. Default. This agreement conveys no title or right to take possession and either party may seek specific performance if the other defaults. If the buyer defaults, seller may at his option retain the earnest money as liquidated damages. Either party shall be entitled to any remedy to which that party may be entitled to against the defaulting party at law or equity under the laws of the State of Nebraska.

18. Home Warranty. Buyer has been informed about the availability of Home Warranty coverage. If such coverage is accepted, it will be paid for by BUYER SELLER ACCEPTS REJECTS

03/2018 Buyer's Initials DS BD / _____ Seller's Initials VE / _____

19. **Compensation of Selling Broker.** Buyer agrees to pay selling broker compensation of \$250.00 at closing, unless Buyer's loan is a government-regulated loan which prohibits Buyer from paying such a fee. If this compensation is paid, Seller and Buyer agree that Buyer's broker, which may be the same as the listing broker, may collect such a fee from both Seller and Buyer.

20. **Agency Disclosure.** Buyer acknowledges receipt of both the agency disclosure pamphlet "Brokerage Relationships in Real Estate Transactions" and an estimated buyer's closing statement when and if required.

21. **Release of Information.** Buyer and Seller authorize the release of financing information on the purchase of this Property to the appropriate Multiple Listing Service (MLS). Buyer authorizes selling agent/broker to market the fact of the sale of this Property involving Broker for a period of up to twelve months from the date of closing.

22. **Notices.** Any notice required to be given to a party to this Purchase Agreement by the terms of this Purchase Agreement or any of its addendums, shall not be complete until received and shall be considered to have been received when the notice has been delivered as set forth in this paragraph. A notice shall be considered for all purposes to have been delivered to the party required to be given notice when the written notice is delivered to the party, the party's agent, the broker of the party's agent, or any real estate licensee associated with the office of the party's agent ('Authorized Recipient'). Fax delivery may be shown by a fax log or by written acknowledgment from an authorized recipient that a notice was received prior to the deadline for giving the notice. E-mail delivery is complete if the Authorized Recipient affirmatively acknowledges the e-mail was received or receipt of a read-receipt email before the deadline for receiving a notice.

23. **Transmittal Authorization.** The undersigned agree that all documents bearing signatures, initials or other marks of acknowledgment by a Buyer, Seller and/or Broker/Agent relating to the real estate transaction contemplated under this Agreement, including offers, counter offers and acceptances: (1) may be transmitted electronically, and/or may use digital signature technology which is compliant with state UBTA and/or federal E-SIGN requirements, and (2) that digital signatures as well as electronic copies of manual signatures, whether scanned, digital photograph, facsimile or other means of image reproduction shall be treated, in all respects, as originals, and (3) that, if requested, the undersigned will submit an original, or copy thereof, to their agents. This Agreement and any addendums or modifications may be signed in counterparts and such counterparts shall be considered as one document.

24. **Entire Agreement.** This document contains the entire agreement of the parties and supersedes all prior agreements or representations oral or written with respect to the property which are not expressly set forth herein or incorporated herein by reference. This agreement may be modified only by a written agreement, signed and dated by both parties. All express representations and warranties shall survive closing. Both parties acknowledge that they have not relied on any statements of the real estate agent or broker which are not herein expressed. The terms of this Agreement shall be binding upon the heirs, personal representatives, administrators, successors and assigns of the respective parties hereto. Time is of the essence in this agreement.

25. **Equal Opportunity.** It is unlawful to discriminate against any person in the terms, conditions or privileges of sale, purchase or lease of a dwelling or in the division of services or facilities in connection therewith because of race, color, religion, national origin, ethnic origin, familial status, sex or handicap.

26. **Acceptance Date.** This offer is null and void if not accepted by Seller on or before May 16, 2022 (Date) at 12 o'clock a.m. p.m. Buyer acknowledges receipt of a copy of this agreement, which has not yet been signed by Seller.

DocuSigned by:

All commissions due are being paid by the Seller, unless otherwise disclosed.

Brad Dall
Signed

Signed

Dodge County School District 0001
Buyer Name Printed

Co-Buyer Name Printed

Address _____ City _____ State _____ Zip _____

Home Phone _____ Other Phone _____

E-mail _____ E-mail _____

03/2018 Buyer's Initials BD / _____

Seller's Initials VC / _____

RECEIPT FOR EARNEST MONEY

NAMES FOR DEED: Dodge County School District 0001

RECEIVED FROM: Brad Dahl the sum of \$ 5,000 by check, cash, other to apply to the purchase price of the Property on terms and conditions as stated. In the event this offer is not accepted by the Seller of the Property within the time specified, the earnest money shall be refunded.

DON PETERSON & ASSOCIATES, REALTORS BY Mike Jensen 5/13/22 (Date Deposit Received)

Complete only one of A, B, or C below:

A: ACCEPTANCE OF ALL TERMS. Seller accepts and agrees to perform all of the terms of the above agreement of its terms.

* Seller Vicki Edwards Date 5/11/22 Seller Date

B: COUNTER OFFER #1 BY SELLER. In response to the above Purchase Agreement dated May 11, 2022 for the sale of the Property, all of the terms and conditions of the Purchase Agreement are accepted and shall remain the same with the exception of the following:

[Blank lines for counter offer details]

This Counter Offer shall expire (Date), at a.m. p.m. (hour in the time zone of the office of the Seller's agent) and be automatically null and void unless, prior to the time of expiration, Buyer's written acceptance is delivered to the Seller's Limited Agent or their Broker's office or the Seller, as noted in paragraph #22.

If this Counter Offer is so delivered, the Purchase Agreement as amended by this Counter Offer shall become a contract between the parties.

Seller reserves the right to withdraw this Counter Offer prior to acceptance. Withdrawal shall be complete if verbal notification of withdrawal is made to the Buyer's Agent or Broker of the Buyer's Agent or Buyer before the delivery of Buyer's written acceptance.

Seller Date Seller Date

COUNTER OFFER ACCEPTANCE

The foregoing Counter Offer is accepted (Date) at (Hour).

Buyer Date Buyer Date

C: REJECTION. The foregoing offer is rejected.

Seller Date Seller Date

03/2018 Buyer's Initials BD / Seller's Initials VE /

AGENT INFORMATION

BUYER AGENT

Jennifer Bixby
Buyer Agent Printed Name

DON PETERSON & ASSOCIATES

jennifer@donpeterson.com
Buyer Agent Email

(402)719-4631
Buyer Agent Phone

SELLER AGENT

Seller Agent Printed Name

Seller Agent Company

Seller Agent Email

Seller Agent Phone

RECEIPTS FOR FULLY EXECUTED PURCHASE AGREEMENT

Buyer acknowledges receipt of executed copy of this agreement.

Buyer Brad Dahl
D5AFB4C4DC854A6...

Date 5/11/2022

Buyer _____

Date _____

Seller acknowledges receipt of executed copy of this agreement.

Seller Vicki Edwards

Date 5/11/22

Seller _____

Date _____



WIRE FRAUD NOTICE ADDENDUM

This Addendum is in addition to and becomes a permanent part of the Purchase Agreement dated 5-11-22 on the property know as 319 W Washington.

NOTICE TO BUYER AND SELLER REGARDING WIRE FRAUD AND SUSPICIOUS COMMUNICATIONS:

Please be aware that the Escrow Company under the attached Agreement may require a wire transfer of funds at Closing. Buyer and Seller should take care to provide wire transfer information only to a proper agent of the Escrow Company. Funds should only be wired to the Escrow Company using account information provided by verified agents of the Escrow Company. With the increased risk of cyber attacks and email hacking, Don Peterson & Associates advises you to NEVER wire funds to any party in connection with the sale, purchase or lease of real estate without both written and verbal authorization and confirmation.

Recently, criminals have been found attempting to impersonate escrow companies and real estate agents in wire fraud schemes. Unauthorized individuals have been caught providing fraudulent wire transfer information to parties in real estate transactions. This could include a criminal contacting Buyer or Seller, directly or indirectly, in an attempt to steal funds that rightfully belong to the parties. These sophisticated criminals may try to hack into your email account or the email of other persons involved in your transaction and direct you to send a wire to the hacker's account. **THEY CAN EVEN SEND EMAILS THAT APPEAR TO BE FROM YOUR AGENT, YOUR CLOSER OR ANOTHER TRUSTED SOURCE!**

In the event that any party believes an unauthorized request has been made for bank account information or funds, the Escrow Company should be contacted immediately. The requests should be verified immediately in person or by telephone using a telephone number that is known to be valid. Parties should be especially skeptical of last minute changes or requests coming from unknown representatives.

In the event that funds are transferred to a fraudulent account, there may be no way to recover these funds from the criminals involved. For this reason, it is extremely important that the Buyer and Seller are vigilant and only provide wire transfer information to proper representatives of the Escrow Company. **PLEASE CONTACT THE ESCROW COMPANY DIRECTLY IF YOU HAVE ANY QUESTIONS.**

I have been provided a copy of the above Notice by my Sales Associate:

Date: _____

Date: _____

Buyer: Vicki Edwards

Seller: 5/11/22

DocuSigned by:
Buyer: Brad Dahl 5/11/2022
D5AFB4C4DC854A0...

Seller: _____



SELLER PROPERTY CONDITION DISCLOSURE EXCLUSIONS



The Seller Property Condition Disclosure Exclusion Statement on the listed property located at:

319 W. Washington Fremont Ne 68025

Is not required because the property is being sold under the following condition(s): *(Initial one)*

- a) Pursuant to a court order, a foreclosure sale, or a sale by a trustee under the power of sale in a deed of trust;
- b) By a trustee in bankruptcy;
- c) To a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor of interest;
- d) By a mortgagee, a beneficiary under a deed of trust, or a Seller under a land contract who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust, at a sale pursuant to a court-ordered foreclosure, or by a deed in lieu of foreclosure;
- e) By fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust except when the fiduciary is also the occupant or was an occupant of one of the dwelling units being sold;
- f) From one co-owner to one or more other co-owners;
- g) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;
- h) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such decree;
- i) Pursuant to a merger, consolidation, sale, or transfer of assets of a corporation pursuant to a plan of merger or consolidation filed with the secretary of state;
- j) To or from any governmental entity;
- k) Of newly constructed residential real property which has never been occupied;
- l) From a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions listed above;
- m) The property is not residential property as defined in statute 76-2, 120, paragraph (1)(c): "Residential real property shall mean property which is being used primarily for residential purposes on which no fewer than one or more than four dwelling units are located..."

DS
BD

DocuSigned by:
Brad Dahl 5/11/2022
D5AFB4C4DC854A6...
 Buyer Date

Vicki Edwards 5/11/22
 Seller Date

DocuSigned by:
Jennifer Bixby
3091060F4FBC4F8...
 Witness Date

 Seller Date

 Witness Date



FREMONT PUBLIC SCHOOLS

Main Street Education &
Administration Center
130 East 9th Street
Fremont, NE 68025
402-727-3000

July 11, 2022

To: Mr. Shepard, Fremont Public Schools Board of Education
From: Jeff Glosser, General Operations Administrator
Re: Concrete Removal and Replacement Throughout the District

Members of the Board of Education,

Several areas have been identified for concrete removal and replacement this summer. An RFP was sent out to three (3) local contractors and pricing was received from Sawyer Construction and Adams Construction.

It is the recommendation of Administration to the Board of Education to utilize the services of Sawyer Construction for concrete removal, repair and/or replacement at Bell Field Elementary, Davenport Elementary, Fremont Middle School, Johnson Crossing Academic and Achievement Center, Grant Elementary, Howard Elementary and Linden Elementary for a not to exceed cost of \$36,370.00. The cost of this project will be paid out of the Depreciation Fund.

Thank you for your consideration.

6/2022 BOE Fremont Public Schools RFP Comparison Sheet For District Concrete Projects

Building	Description/Dimensions	Sawyer Pricing	Adams Pricing
Bell Field Elementary	Door 3 - Driveway 7'10" X 5'10" and 10'5" X 18'	2,200	4,020.00
	Door 5 - Refer to photo for dimensions	650	1,256.00
	Facing Door 8 - #1 Refer to photo for dimensions	650	2,355.00
	Facing Door 8 - #2 Refer to photo for dimensions	750	925
	Facing Door 8 - #3 8' X 3'5"	600	820
	Facing Door 8 - #4 6' X 1'	600	480
		5,450	9,856.00
Davenport Elementary	SE Corner of Buinding to Door #7		
	5'10" X 38'8"	2,300.00	3,510.00
	8'2" X 11'	800	2,475.00
	Approx 6' X 11'	800	1,980.00
		3,900	7,965.00
Fremont Middle School	Door 5 - 12' X 5' section	600	1,800.00
	Door 10 - N. Side large pie shaped area approximately 511 sq ft	5,100	7,665.00
	Door 16 - N. Side - see photo for dimensions	600	1,300.00
	Door 18 - N. Side - see photo for dimensions	600	1,170.00
	Door 19/20 - 6' X 2' and 23'6" X 6'	1,600	3,300.00
	E. Side of Building Sidewalk - 10' X 10'	1,000.00	1,500.00
	SE Corner Bus Drive - 24'3" X 24'5", 12'8" X 2', 25'6" X 7'	8,000.00	13,380.00
		17500	30,115.00
Fremont JCAC	Door 2/3 In front of stairs 12' X 2'6"	800	1,080.00
	Door 14 - Tear out and replace "hole" - 10" X 10"	500	300
	Door 21 - 10'6" X 30"	1,000.00	1,210.00
		2300	2,590.00
Grant Elementary	Door 4 - 2 Sections 21'6" X 7' and 11' X 4'3"	2,000.00	4,615.00
	Remove rail and replace/fill with concrete	500	
		2,500.00	4,615.00
Howard Elementary	Door 2 - Grind edge of apron to transition angle to sidewalk	800	700
		800	700
Linden Elementary	Door 2 - Replace section of concrete 8' X 4'	800	800
	Remove and Replace two sections of concrete on the playground area - 24' X 13'	3,120.00	4,680.00
		3920	5480
Grand Total		36,370	61,321.00



FREMONT PUBLIC SCHOOLS

Main Street Education &
Administration Center
130 East 9th Street
Fremont, NE 68025
402-727-3000

July 11, 2022

To: Mr. Shepard, Fremont Public Schools Board of Education
From: Jeff Glosser, General Operations Administrator
Re: Milliken Park Prep and Paint 2002 Addition

Members of the Board of Education,

As we begin the remodel of Milliken Park Elementary it has been determined that the 2002 classroom addition needs attention in regards to wall repairs and paint in the classrooms, offices and hall throughout that area.

I met with two (2) contractors and pricing was received from Sean Ross Painting and Gerst Painting. Both contractors are able to complete this project by August 1, 2022.

It is the recommendation of Administration to the Board of Education to utilize the services of Gerst Painting Inc for prepping and painting the walls, door frames and window frames of the 2002 addition for a not to exceed cost of \$15,993.00. The cost of this project will be paid out of the Depreciation Fund.

Thank you for your consideration.

072022 Milliken Park Elementary Prep and Paint Pricing in the 2002 Addition

CONTRACTOR	PRICING			
Sean Ross Painting	\$16,400.00			
Gerst Painting Inc.	\$15,993.00			

Both contractors indicated they could complete the project by August 1.



15 Years Running

Find us on

Interior & Exterior
Painting

Walls, Ceilings
& Roof Tops

Wallpaper Removal
& Much More

Stucco, Brick & Block
Painting

Holes Filled,
Textured & Painting

Drywall Repair

Steel, Metal &
Electric Grinders

Window Caulking
& Expansion Joints

Railings, Handrails
& Stairway Painting

Hot or Cold Water
Power Washing

Industrial Coatings

Doors & Frames
(Metal or Wood)

Rust Inhibitors

Vacuum Sanders

Repainting of
Existing Woodwork

Milican Elementary

7/5/2022

Job: 2950 Dale St

Fremont, NE

Attn: Jeff Glosser 402-459-0516

Estimator: Mike Gerst 402-658-8530

Thank you for considering Gerst Painting for your project. We would like to offer the following proposal for your review and evaluation. Gerst Painting is excited about working with you again!
If you have any questions, please call us at 402-289-1010.

Job Description

**PAINTING CLASS ROOMS & HALLWAYS , WALLS, PAINTED
DOOR FRAMES AND WINDOW FRAMES**

Prepwork – Gerst to cover and protect all areas as needed. Gerst to repair any cracks, nail holes, marks ,and scratches, Spackle, and sand to prepare for repainting

Painting: - Gerst to prep and repaint the classrooms, hallways, walls ,and painted door frames and window frames, Gerst to Apply 1-2 coats of Top Quality latex eggshell on all walls, and Apply 1-2 coats of Top-Quality Satin finish on all painted door frames and window frames.

NOTES ABOUT THE JOB:

NOT TO INCLUDE This does not include any Stain/Finished doors or trim.

- Gerst to follow all the rules and regulations
- Job must be done by August 1st per phone conversation with Jeff Glosser on June 24th 2022.

Labor:	\$13,772.00
Paint & Supplies:	\$2,221.00
TOTAL INVESTMENT:	\$15,993.00

Please take special note of details in job description; Gerst is not required to perform any projects or tasks not specifically listed.

BVH ARCHITECTURE

DATE: 7/7/2022

PROJECT: FPS Lenihan Improvements
PROJECT #: 21073

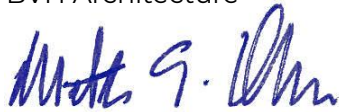
SUBJECT: Bid Results
TO: Brad Dahl, Associate Superintendent

Mr Brad Dahl,

BVH has reviewed the bids received and recommends that all bids are rejected due to irregularities and all bids being over the project budget for the allocated ESSER funding. Attached is the bid tab dated June 30, 2022.

Let us know if you have any further questions.

Sincerely,
BVH Architecture



Matt Wegener, AIA, LEED AP
Associate Principal, Project Manager

BVH ARCHITECTURE

BID TABULATION
DATE: 06/30/2022

PROJECT: FPS Lenihan Building Improvements
PROJECT #: 21073

CONTRACTOR	ADD. 1 & 2	BID BOND	BASE BID	ALT #1	ALT #2
Dicon Construction	yes	yes	\$3,080,000 Noted exclusion of frame types P, Q, R, and S	\$290,000	\$12,500
DR Anderson	yes	yes	\$2,649,000 Noted exclusion of frame types P, Q, R, and S	\$232,700	\$16,600
Sampson	yes	yes	\$3,180,000	\$293,000	\$12,000

Fremont Public Schools

Tuition Rates for 2022-2023

2020-2021 ADM Cost	\$13,445
Growth Rate	1.03
2022-2023 K-12 Tuition Rate	\$13,848
2021-2022 SPED Tuition Rate	\$31,702
Growth Rate	1.03
2022-2023 SPED Tuition Rate	\$32,653*

*Actual tuition would be determined based on level of programming required by IEP.