

Special Board of Education Meeting

Monday, September 28, 2020 8:30 PM

Boone Central High School Library
605 South 6th St.
Albion, NE 68620

1. Call Meeting to Order - Nebraska Open Meetings Act

Notice of the meeting was given in advance by publication to the public and to all members of the Board of Education. Availability of the agenda was communicated in advance. The Open Meetings Act was available for review.

2. Roll Call

3. Welcome Guests

4. Board Committee Reports

Board member Stopak reported that the Athletic Coop Committee met on 9/28 to discuss and review information pertaining to questions by the public to consider the addition of baseball. The committee is waiting for additional information from area schools; an update from the committee will be reported at the October regular board meeting.

5. Review of Action Agenda Items

6. Public Comment

7. Action Agenda

7.1. Amend Reopening Resolution

Motion to approve the Re-Opening Resolution as presented. Passed with a motion by Ed Knott and a second by Tim Stopak.

Darren Wright: Nay, Karrie Fogleman: Yea, Justin Frey: Yea, Ed Knott: Yea, Kathleen Rolf: Yea, Tim Stopak: Yea

Yea: 5, Nay: 1

The current COVID situation was discussed in regard to the mandating masks. Following the discussion, it was recommended that the mask mandate remain in place for all 6th-12th students and all staff. The mask section of the 2020-21 Re-opening resolution was amended as follows: Boone Central School District will maintain and utilize a Four-Color Risk Dial of Green, Yellow, Orange, and Red to indicate the current level of Risk. The Superintendent, in consultation with the Board President, Local Health Department, School Nurse Staff, and District Administrators, is authorized to determine mask directives for staff and students based on the current level of risk.

7.2. Student Discipline Act Policy

Motion to approve amended Student Discipline Policy #5200 as presented. Passed with a motion by Karrie Fogleman and a second by Kathleen Rolf.

Karrie Fogleman: Yea, Justin Frey: Yea, Ed Knott: Yea, Kathleen Rolf: Yea, Tim Stopak: Yea, Darren Wright: Yea

Yea: 6, Nay: 0

The Student Discipline Act Policy was amended to include language pertaining to mask wearing requirements.

7.3. Middle School Addition Construction Guaranteed Maximum Price (GMP)

Motion to approve Document A141-2014 Exhibit A, the Design-Build Amendment, with a Stipulated Sum of \$3,981,091, with W.A. Klinger, LLC, and authorize the superintendent and the board president to execute the same on behalf of the district. Passed with a motion by Darren Wright and a second by Ed Knott.

Karrie Fogleman: Yea, Justin Frey: Yea, Ed Knott: Yea, Kathleen Rolf: Yea, Tim Stopak: Yea, Darren Wright: Yea

Yea: 6, Nay: 0

8. Adjournment

The meeting adjourned at 9:45 pm.

Chairperson

Superintendent

2020–2021 BOONE CENTRAL SCHOOL DISTRICT RE-OPENING RESOLUTION

WHEREAS, the school district was closed during a portion of the 2019–2020 school year based on the statewide outbreak of COVID-19; and

WHEREAS, the President and the Governor have declared a state of emergency; and

WHEREAS, the State of Nebraska and the East Central District Health Department have issued various directed health measures in response to the novel coronavirus and the COVID-19 pandemic; and

WHEREAS, the directed health measures currently in place allow the school facilities to be reopened to in-person student attendance; and

WHEREAS, the Board of Education wishes to support student learning while taking reasonable precautions to keep students, staff, and administrators safe; and

WHEREAS, the school district is also completing reopening plans with contingencies for changes in circumstances, but for the time being, the Board of Education believes it is important to address these critical issues to assist the administration in preparing for plans when school resumes;

NOW, THEREFORE, be it resolved that the Board of Education has determined as follows:

Site for Instruction

Student instruction will occur in-person in the classroom unless otherwise required by law. All students who are enrolled in the school district must attend school on all days when school is open for in-person instruction unless the student's illness makes attendance impossible or impractical or is otherwise excused by board policy.

Masks

Boone Central School District will maintain and utilize a Four Color Risk Dial of Green, Yellow, Orange, and Red to indicate the current level of Risk. The Superintendent, in consultation with the Board President, Local Health Department, School Nurse Staff, and District Administrators, is authorized to determine mask directives for staff and students based on the current level of risk.

Leave / Staff Attendance

Employees will be permitted to take leave (paid or otherwise) provided by the terms of employment (staff contract, negotiated agreement, etc.) and as provided by law (e.g., ADA, FMLA, FFCRA, etc.).

The superintendent is authorized to take all reasonable and necessary action to implement this resolution without further action of the Board.

If there is any conflict between this resolution and any provision of Board policy or of staff or student handbooks, the terms in this resolution shall control.

NOW, THEREFORE, be it finally resolved that this resolution will expire upon the sooner of action taken by the Board to rescind it or the expiration of the 2020-2021 school year.

Resolution Approved by the Board on July 20, 2020.

Resolution Amended by the Board on September 28, 2020.

Board President

Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in this policy and the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process. Such actions may include, but need not be limited to, counseling of students, parent conferences, referral to restorative justice practices or services, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation. Disciplinary consequences may also include in-school suspension, Saturday School, and any other consequence authorized by law. District administrators may develop building-specific protocols for the imposition of student discipline.

In this policy, references to "Principal" shall include building principals, the principal's designee, or other appropriate school district administrators.

Any statement, notice, recommendation, determination, or similar action specified in this policy shall be effectively given at the time written evidence thereof is delivered personally to or upon receipt of certified or registered mail or upon actual knowledge by a student or his or her parent or guardian.

Any student who is suspended or expelled from school pursuant to this policy may not participate in any school activity during the duration of that exclusion including adjacent school holidays and weekends. The student activity eligibility of a student who is mandatorily reassigned shall be determined on a case-by-case basis by the principal of the building to which the student is reassigned.

Short-Term Suspension

The Principal may exclude students from school or any school function for a period of up to five school days (short-term suspension) on the following grounds:

1. Conduct constituting grounds for expulsion as hereinafter set forth; or,
2. Other violations of rules and standards of behavior adopted by the Board of Education or the administrative or teaching staff of the school, that occur on or off school grounds, if such conduct interferes with school purposes or there is a connection between such conduct and school.

The following process applies to short-term suspension:

1. The Principal shall make a reasonable investigation of the facts and circumstances. Short-term suspension shall be imposed only after a determination that the suspension is necessary to help any student, to further school purposes, or to prevent an interference with school purposes.
2. Prior to commencement of the short-term suspension, the student will be given oral or written notice of the charges against the student. The student will be advised of what he or she is accused of having

done, be given an explanation of the evidence the authorities have, and be given an opportunity to explain the student's version of the facts.

3. Within 24 hours or such additional time as is reasonably necessary following the suspension, the Principal will send a written statement to the student, and the student's parent or guardian, describing the student's conduct, misconduct or violation of the rule or standard and the reasons for the action taken. An opportunity will be given to the student, and the student's parent or guardian, to have a conference with the Principal ordering the short-term suspension before or at the time the student returns to school. The Principal shall determine who, in addition to the parent or guardian, is to attend the conference.
4. Students who are short-term suspended will be given the opportunity to complete classwork, including but not limited to examinations.

Emergency Exclusion

Students may be emergency excluded from school pursuant to the board's separate policy on emergency exclusion or state law.

Weapons and/or Firearms

Students may be disciplined for the possession of weapons and/or firearms pursuant to the board's separate policy on weapons and firearms or state law.

Long-Term Suspension

Students may be excluded by the Principal from school or any school function for a period of more than five school days but less than twenty school days (long-term suspension) for any conduct constituting grounds for expulsion as hereinafter set forth. The process for long-term suspension is set forth below.

Expulsion

1. **Meaning of Expulsion.** Expulsion means exclusion from attendance in all schools, grounds and activities of or within the system for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred (a) within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or (b) within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year, or (c) unless the expulsion is for conduct specified in these rules or in law as permitting or requiring a longer removal, in which case the expulsion shall remain in effect for the period specified therein. Such action may be modified or terminated by the school district at any time during the expulsion period.
2. **Summer Review.** Any expulsion that will remain in effect during the first semester of the following school year will be automatically scheduled for review before the beginning of the school year. The review will be conducted by the hearing officer who conducted the initial expulsion hearing, or a hearing officer appointed by the Superintendent in the event no hearing was previously held or the initial hearing officer is no longer available or willing to serve, after the hearing officer has given notice of the review to the student and the student's parent or guardian. This review shall be limited to newly discovered

evidence or evidence of changes in the student's circumstances occurring since the original hearing. This review may lead to a recommendation by the hearing officer that the student be readmitted for the upcoming school year. If the school board or board of education or a committee of such board took the final action to expel the student, the student may be readmitted only by action of the board. Otherwise the student may be readmitted by action of the Superintendent.

3. **Suspension of Enforcement of an Expulsion:** Enforcement of an expulsion action may be suspended (i.e., "stayed") for a period of not more than one full semester in addition to the balance of the semester in which the expulsion takes effect, and as a condition of such suspended action, the student may be assigned to a school, class, or program/plan and to such other consequences which the school district deems appropriate.
4. **Alternative School or Pre-expulsion Procedures.** The school shall either provide an alternative school, class or educational program for expelled students or shall follow the pre-expulsion procedures outlined in NEB. REV. STAT. 79-266.

Grounds for Long-Term Suspension, Expulsion or Mandatory Reassignment:

The following conduct constitutes grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, NEB. REV. STAT. § 79-254 through 79-296, when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event:

1. Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;
2. Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;
3. Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;
4. Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;
5. Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon (*see also board policy on weapons and firearms*);
6. Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103.02 or being under the influence of a controlled substance or alcoholic liquor (*note: the term "under the influence" for school purposes has a less strict meaning than it does under criminal law; for school purposes, the term means any level of impairment and includes even the odor of alcohol on the breath or person of a student; also, it includes being impaired by reason of the abuse of any material used as a stimulant*);
7. Public indecency as defined in section 28-806, except that this prohibition shall apply only to students at least twelve years of age but less than nineteen years of age;
8. Engaging in bullying as defined in section 79-2,137 and in these policies;
9. Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or

attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 28-319.01, as such sections now provide or may hereafter from time to time be amended;

10. Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or
11. A repeated violation of any of the following rules if such violations constitute a substantial interference with school purposes:
 - a. The use of language, written or oral, or conduct, including gestures, which is profane or abusive to students or staff members. Profane or abusive language or conduct includes, but is not limited to, that which is commonly understood and intended to be derogatory toward a group or individual based upon race, gender, national origin, or religion;
 - b. Dressing or grooming in a manner which violates the school district's dress code and/or is dangerous to the student's health and safety, a danger to the health and safety of others, or which is disruptive, distracting or indecent to the extent that it interferes with the learning and educational process;
 - c. Violating school bus rules as set by the school district or district staff;
 - d. Possessing, using, selling, or dispensing tobacco, drug paraphernalia, an electronic nicotine delivery system, or a tobacco imitation substance or packaging, regardless of form, including cigars, cigarettes, chewing tobacco, and any other form of tobacco, tobacco derivative product or imitation or electronic cigarettes, vapor pens, etc.;
 - e. Possessing, using, selling, or dispensing any drug paraphernalia or imitation of a controlled substance regardless of whether the actual substance possessed is a controlled substance by Nebraska law;
 - f. Possession of pornography;
 - g. Sexting or the possession of sexting images (a combination of sex and texting - the act of sending sexually explicit messages or photos electronically);
 - h. Engaging in hazing, defined as any activity expected of someone joining a group, team, or activity that humiliates, degrades or risks emotional and/or physical harm, regardless of the person's willingness to participate. Hazing activities are generally considered to be: physically abusive, hazardous, and/or sexually violating and include but are not limited to the following: personal servitude; sleep deprivation and restrictions on personal hygiene; yelling, swearing and insulting new members/rookies; being forced to wear embarrassing or humiliating attire in public; consumption of vile substances or smearing of such on one's skin; branding; physical beatings; binge drinking and drinking games; sexual simulation and sexual assault;
 - i. Bullying which shall include cyber-bullying, defined as the use of the internet, including but not limited to social networking sites such as Facebook, cell phones or other devices to send, post or text message images and material intended to hurt or embarrass another person. This may include, but is not limited to; continuing to send e-mail to someone who has said they want no further contact with the sender; sending or posting threats, sexual remarks or pejorative labels (i.e., hate speech); ganging up on victims by making them the subject of ridicule in forums, and posting false statements as fact intended to humiliate the victim; disclosure of personal data, such as the victim's real name, address, or school at websites or forums; posing as the identity of the victim for the purpose of publishing material in their name that defames or ridicules them; sending threatening and harassing text, instant messages or emails to the victims; and posting or sending rumors or gossip to instigate others to dislike and gang up on the target;

- j. Violation of the district's computer acceptable computer use policy are subject to discipline, up to and including expulsion;
- k. Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a simulated or "look-a-like" weapon;
- l. Using any object to simulate possession of a weapon; and
- m. Knowingly making a false statement or knowingly submitting false information during the Title IX grievance process or any other school investigation or making a materially false statement in bad faith in the course of a Title IX grievance proceeding or any other school investigation; and
- n. Failure to wear a mask as required or directed; and
- o. Any other violation of a rule or regulation established by a school district staff member pursuant to authority delegated by the board.

Due Process Afforded to Students Facing Long-term Suspension or Expulsion

The following procedures shall be followed regarding any long-term suspension, expulsion or mandatory reassignment

1. On the date of the decision to discipline, the Principal shall file with the Superintendent a written charge and a summary of the evidence supporting such charge.
2. The Principal shall serve the student and the student's parents or guardian with a written notice by registered or certified mail or personal service within two school days of the date of the decision to recommend long-term suspension or expulsion. The notice shall include the following:
 - a. The rule or standard of conduct allegedly violated and the acts of the student alleged to constitute a cause for long-term suspension, expulsion, or mandatory reassignment, including a summary of the evidence to be presented against the student;
 - b. The penalty, if any, which the principal has recommended in the charge and any other penalty to which the student may be subject;
 - c. A statement that, before long-term suspension, expulsion, or mandatory reassignment for disciplinary purposes can be invoked, the student has a right to a hearing, upon request, on the specified charges;
 - d. A description of the hearing procedures provided by the act, along with procedures for appealing any decision rendered at the hearing;
 - e. A statement that the principal, legal counsel for the school, the student, the student's parent, or the student's representative or guardian has the right (i) to examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and (ii) to know the identity of the witnesses to appear at the hearing and the substance of their testimony; and
 - f. A form on which the student, the student's parent, or the student's guardian may request a hearing, to be signed by such parties and delivered to the principal or superintendent in person or by registered or certified mail.

3. When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the superintendent, the student may be suspended by the principal until the date the long-term suspension, expulsion, or mandatory reassignment takes effect if no hearing is requested or, if a hearing is requested, the date the hearing examiner makes the report of his or her findings and a recommendation of the action to be taken to the superintendent, if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of (a) interference with an educational function or school purpose or (b) a personal injury to the student himself or herself, other students, school employees, or school volunteers.
4. Nothing in this policy shall preclude the student, student's parents, guardian or representative from discussing and settling the matter with appropriate school personnel prior to the hearing stage.
5. If a hearing is requested within five days after receipt of the notice, the Superintendent shall appoint a hearing officer who shall follow the "hearing procedures" outlined below.
6. If a hearing is requested more than five school days following the receipt of the written notice, but not more than thirty calendar days after receipt, the Superintendent shall appoint a hearing officer who shall follow the "hearing procedures" outlined below, except that the time constraints set forth may differ as provided by law and this policy. The student shall be entitled to a hearing but the consequence imposed may continue in effect pending final determination.
7. If a request for hearing is not received within thirty calendar days following the mailing or delivery of the written notice, the student shall not be entitled to a hearing.

In the event a hearing is requested, the hearing, hearing procedures, the student's rights and any appeals or judicial review permitted by law shall be governed by the applicable provisions of the Nebraska Student Discipline Act (NEB. REV. STAT. § 79-254 to 79-294). The school district will provide parents with copies of the relevant statutes upon request.

Reporting Requirement to Law Enforcement

Violations of this section will result in a report to law enforcement if:

1. The violation includes possession of a firearm;
2. The violation results in child abuse;
3. It is a violation of the Nebraska Criminal Code that the administration believes cannot be adequately addressed solely by discipline from the school district;
4. It is a violation of the Nebraska Criminal Code that endangers the health and welfare of staff or students;
5. It is a violation of the Nebraska Criminal Code that interferes with school purposes;
6. The report is required or requested by law enforcement or the county attorney.

Reference: KSB 5035
Perry 5101

Date of Adoption: July 20, 2015
History of Revisions: 08-14-2017, 07-16-2018, 11-12-2018, 07-15-2019
Revised on: July 20, 2020
Revised on: September 28, 2020



AIA[®] Document A141[™] – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141[™]-2014, Standard Form of Agreement Between Owner and Design-Builder dated the 28th day of September in the year 2020 (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

Boone Central Schools
Middle School Addition

THE OWNER:

(Name, legal status and address)

Boone Central Schools, a/k/a Boone County School District 06-0001
605 S. 6th St.
Albion, NE 68620

THE DESIGN-BUILDER:

(Name, legal status and address)

W.A. Klinger, L.L.C.
2015 E. 7th Street
P.O. Box 8800
Sioux City, IA 51102

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below
(Paragraphs deleted)

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be three million nine-hundred eighty-one thousand ninety one dollars and no cents (\$ 3,981,091), subject to authorized adjustments as provided in the Design-Build Documents, and calculated as follows:

Core & Shell	\$979,645
Buildout	\$893,414
MEP	\$929,478
Subtotal	\$2,802,537
Design Fee	\$326,750
GC's	\$334,966 (Includes Supervision, Equipment, Partial Subsistence, Overhead, Winter Conditions, etc)
Contractor Fee	\$210,000
5% Contingency	\$160,824
Subtotal #2	\$3,835,077
Playground Allowance	\$40,000
Landscaping Allowance	\$8,000
MC Shelving/Lab Equip	\$30,000
Electrical Non-com All.	\$68,014 (Included but may not be needed- awaiting the Electrician to confirm his bid included Fire Alarm)
Grand Total GMP	\$3,981,091

§ A.1.2.2

(Paragraphs deleted)
Intentionally omitted.

§ A.1.2.3

(Paragraphs deleted)
Intentionally omitted.
(Table deleted)
(Paragraphs deleted)

§ A.1.3 Intentionally omitted.

§ A.1.4 Intentionally omitted.

(Paragraphs deleted)

(Table deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Prior to the submission of any Applications for Payment, the Design-Builder shall submit for approval a schedule of values with respective quantities. The schedule of values shall allocate the contract amount among the various portions of the Design-Builder's work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 25th day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 Intentionally omitted.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Nebraska:

- (1) A current sworn statement from the Design-Builder setting forth all contractors, subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to contractors, subcontractors, and material suppliers, provided that the Design-Builder shall only be required to submit such a sworn statement when (1) the amount of the expenditure (either cumulatively or individually) exceeds \$25,000 or (2) the Owner specifically requests such documentation. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's contractors, subcontractors and material suppliers and charge those payments against the Contract Sum. In the event the amounts paid by Owner to Design-Builder's contractors, subcontractors, and material suppliers exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.
- (2) Commencing with the second Application for Payment submitted by a Contractor, receipts from all contractors, subcontractors, material suppliers, and, when appropriate, lower-tier subcontractors, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities.
- (3) Such other information, documentation, and materials as the Owner, the Architect, the Owner's lender, or the title insurer may require.
- (4) If at any time there shall be evidence of a claim which, if established, the Owner might become liable, and that is for Work within the scope of this Design-Build Contract, or if the Design-Builder shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Design-Builder of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under this Agreement, or any other agreement between the Owner and the Design-Builder, an amount sufficient to indemnify the Owner against any claim, or to fully satisfy such liability, claim or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim develop after all payments are made hereunder, the Design-Builder shall refund those to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim and to deduct all amounts paid to satisfy or discharge a claim plus Owners' attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.
- (5) No progress payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. 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.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.1.8 Except as hereinafter provided, 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 Design-Build Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (1) any of the Owners rights to retainage in connection with other payments to the Design-Builder or (2) any other right or remedy that the Owner has under the Design-Build Documents, at law or in equity.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 10% on the Work, except as otherwise required by law. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 10%, except as otherwise required by law;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

(Paragraphs deleted)

§ A.1.5.3 Intentionally Omitted.

§ A.1.5.4 Intentionally omitted.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. Final payment is further subject to the Owner's prior receipt from the Design-Builder of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds related to the Work, and assignments of all guarantees and warranties from contractors, subcontractors, vendors, suppliers, or manufacturers, all as required by the Design-Build Documents.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 60 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than

(Paragraphs deleted)

July 16, 2021.

(Table deleted)

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

§ A.2.3 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Design-Builder 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 Design-Builder'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 Design-Builder that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Design-Builder 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 Design-Builder 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

§ A.2.4 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 Design-Builder a sum equal to \$1000.00 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ A.2.5 Timely Final Completion is an essential condition of this Agreement, Design-Builder agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Design-Builder agree that should Design-Builder fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Design-Builder 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 \$500.00 per day. Owner may deduct from the Final Payment made to Design-Builder, or, if sufficient funds are not available, then Design-Builder 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.

§ A.2.6 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Design-Builder 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.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract: N/A

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Boone Central Schools - Boone Middle School Addition - Bid Set - Project Manual - DLR Group Project No. 10-20115-00 – September 3, 2020 (674 pages)

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

See Boone Central Schools – Middle School Addition – Combined Contract Index of Drawings (59 Pages) 09/03/20

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Design-Builder’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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Other identifying information:

All other documents referenced in and incorporated into the Contract and the Design-Build Documents.

§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

Kirk Bradley

.2 Project Manager

Mitchell Connot

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

§ A.4.2 The Design-Builder shall not remove or replace its superintendent, project manager, Consultants, Contractors or suppliers without Owner's approval other than in the event of the death or incapacitation of an individual superintendent, project manager, Consultant, Contractor, or supplier.

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

Init.

/

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
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§ A.5.1.1.3 Intentionally omitted.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 Section A.5.1.1.

§ A.5.1.1.5 Intentionally omitted.

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 **Costs of Materials and Equipment Incorporated in the Completed Construction**

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 **Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder 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 Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions and Project websites.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 **Miscellaneous Costs**

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 The Owner is a tax-exempt entity under state and/or federal law. Owner will provide Design-Builder with tax-exempt status documentation upon request.

Init.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes directly resulting from the Owner's actions and decisions.

§ A.5.1.5.8 Intentionally omitted.

§ A.5.1.5.9 Intentionally omitted.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder 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, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

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

Init.

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User Notes:

(1765357366)

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1 unless such personnel perform Work for the Project;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Delay or damages claims except as provided otherwise in the A141.
- .9 Storage costs, unless with prior written Owner approval.
- .10 All costs intentionally deleted from Sections 5.2.1 through 5.2.9 above, including subsections.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Design-Builder shall take advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and which conform to the Design-Build Documents, and any such discounts, rebates and refunds shall accrue to the Owner, subject to Owner paying Design-Builder in advance of such payments/invoices becoming due in time to get the discount.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder 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 Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder 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 the 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 Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder’s skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests.

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

OWNER *(Signature)*

Nicole Hardwick Superintendent
(Printed name and title)

DESIGN-BUILDER *(Signature)*

Matt Thompson President
(Printed name and title)



Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:28:15 CT on 09/28/2020.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 28th day of September in the year 2020 (the "Agreement")

...

Boone Central Schools
Middle School Addition

...

Boone Central Schools, a/k/a Boone County School District 06-0001
605 S. 6th St.
Albion, NE 68620

...

(Name, legal status and address)

W.A. Klinger, L.L.C.
2015 E. 7th Street
P.O. Box 8800
Sioux City, IA 51102

...

- Stipulated Sum, in accordance with Section A.1.2 below
 Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
 Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

~~(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)~~

PAGE 2

§ A.1.2.1 The Stipulated Sum shall be three million nine-hundred eighty-one thousand ninety one dollars and no cents (\$ 3,981,091), subject to authorized adjustments as provided in the Design-Build ~~Documents~~Documents, and calculated as follows:

<u>Core & Shell</u>	<u>\$979,645</u>
<u>Buildout</u>	<u>\$893,414</u>
<u>MEP</u>	<u>\$929,478</u>

-

Subtotal	\$2,802,537
Design Fee	\$326,750
GC's	\$334,966 (Includes Supervision, Equipment, Partial Subsistence, Overhead, Winter Conditions, etc)
Contractor Fee	\$210,000
5% Contingency	\$160,824
-	
Subtotal #2	\$3,835,077
-	
Playground Allowance	\$40,000
Landscaping Allowance	\$8,000
MC Shelving/Lab Equip	\$30,000
Electrical Non-com All.	\$68,014 (Included but may not be needed- awaiting the Electrician to confirm his bid included Fire Alarm)
-	
Grand Total GMP	\$3,981,091

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

Intentionally omitted.

§ A.1.2.3 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Intentionally omitted.

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$ —), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.
(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price. (Provide information below or reference an attachment.)

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

§ A.1.3 Intentionally omitted.

§ A.1.4 Intentionally omitted.

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

...

§ A.1.5.1.1 Prior to the submission of any Applications for Payment, the Design-Builder shall submit for approval a schedule of values with respective quantities. The schedule of values shall allocate the contract amount among the various portions of the Design-Builder's work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

PAGE 3

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 25th day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

...

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Intentionally omitted.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in

accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Nebraska:

- (1) A current sworn statement from the Design-Builder setting forth all contractors, subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to contractors, subcontractors, and material suppliers, provided that the Design-Builder shall only be required to submit such a sworn statement when (1) the amount of the expenditure (either cumulatively or individually) exceeds \$25,000 or (2) the Owner specifically requests such documentation. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's contractors, subcontractors and material suppliers and charge those payments against the Contract Sum. In the event the amounts paid by Owner to Design-Builder's contractors, subcontractors, and material suppliers exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.
- (2) Commencing with the second Application for Payment submitted by a Contractor, receipts from all contractors, subcontractors, material suppliers, and, when appropriate, lower-tier subcontractors, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities.
- (3) Such other information, documentation, and materials as the Owner, the Architect, the Owner's lender, or the title insurer may require.
- (4) If at any time there shall be evidence of a claim which, if established, the Owner might become liable, and that is for Work within the scope of this Design-Build Contract, or if the Design-Builder shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Design-Builder of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under this Agreement, or any other agreement between the Owner and the Design-Builder, an amount sufficient to indemnify the Owner against any claim, or to fully satisfy such liability, claim or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim develop after all payments are made hereunder, the Design-Builder shall refund those to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim and to deduct all amounts paid to satisfy or discharge a claim plus Owners' attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.
- (5) No progress payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

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§ A.1.5.1.8 Except as hereinafter provided, 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 Design-Build Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (1) any of the Owners rights to retainage in connection with other payments to the Design-Builder or (2) any other right or remedy that the Owner has under the Design-Build Documents, at law or in equity.

...

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~percent (—%) on the Work.~~ 10% on the Work, except as otherwise required by law. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~percent (—%);~~ 10%, except as otherwise required by law;

...

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1~~ Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

~~§ A.1.5.3.2~~ Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~.1~~ Take the Cost of the Work as described in Article A.5 of this Amendment;
- ~~.2~~ Add the Design-Builder's Fee, less retainage of ~~percent (—%).~~ The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~.3~~ Subtract retainage of ~~percent (—%)~~ from that portion of the Work that the Design-Builder self-performs;
- ~~.4~~ Subtract the aggregate of previous payments made by the Owner;
- ~~.5~~ Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~.6~~ Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

~~§ A.1.5.3.3~~ The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

~~§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~

~~§ A.1.5.4.1~~ Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price 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 Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual 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.

~~§ A.1.5.4.2~~ Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- ~~.1~~ Take 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- ~~2~~ Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~3~~ Add the Design-Builder's Fee, less retainage of ~~—~~ percent (~~—~~%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~4~~ Subtract retainage of ~~—~~ percent (~~—~~%) from that portion of the Work that the Design-Builder self-performs;
- ~~5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~7~~ Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

~~§ A.1.5.4.3~~ The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

~~§ A.1.5.3~~ Intentionally Omitted.

~~§ A.1.5.4~~ Intentionally omitted.

~~§ A.1.5.5.1~~ Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. Final payment is further subject to the Owner's prior receipt from the Design-Builder of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds related to the Work, and assignments of all guarantees and warranties from contractors, subcontractors, vendors, suppliers, or manufacturers, all as required by the Design-Build Documents.

~~§ A.1.5.5.2~~ If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within ~~30-60~~ days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

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~~§ A.2.2~~ The Design-Builder shall achieve Substantial Completion of the Work not later than (~~—~~) days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

July 16, 2021.

Portion of Work

Substantial Completion Date

...

§ A.2.3 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Design-Builder 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 Design-Builder'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 Design-Builder that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Design-Builder 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 Design-Builder 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

§ A.2.4 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 Design-Builder a sum equal to \$1000.00 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ A.2.5 Timely Final Completion is an essential condition of this Agreement, Design-Builder agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Design-Builder agree that should Design-Builder fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Design-Builder 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 \$500.00 per day. Owner may deduct from the Final Payment made to Design-Builder, or, if sufficient funds are not available, then Design-Builder 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.

§ A.2.6 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Design-Builder 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.

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§ A.3.1.1 The Supplementary and other Conditions of the Contract: N/A

...

Boone Central Schools - Boone Middle School Addition - Bid Set - Project Manual - DLR Group Project No. 10-20115-00 – September 3, 2020 (674 pages)

...

See Boone Central Schools – Middle School Addition – Combined Contract Index of Drawings (59 Pages) 09/03/20

...

All other documents referenced in and incorporated into the Contract and the Design-Build Documents.

PAGE 7

Kirk Bradley

...

Mitchell Connot

...

§ A.4.2 The Design-Builder shall not remove or replace its superintendent, project manager, Consultants, Contractors or suppliers without Owner’s approval other than in the event of the death or incapacitation of an individual superintendent, project manager, Consultant, Contractor, or supplier.

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§ A.5.1.1.3 Wages and salaries of the Design-Builder’s supervisory or administrative personnel engaged at factories, workshops or on the road, 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.Intentionally omitted.

...

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner’s prior approval.Intentionally omitted.

...

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.reproductions and Project websites.

...

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.The Owner is a tax-exempt entity under state and/or federal law. Owner will provide Design-Builder with tax-exempt status documentation upon request.

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§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder’s negligence or failure to fulfill a specific responsibility in the Design-Build Documents.directly resulting from the Owner’s actions and decisions.

§ A.5.1.5.8 With the Owner’s prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.Intentionally omitted.

§ A.5.1.5.9 With the Owner’s prior approval, expenses incurred in accordance with the Design-Builder’s standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder’s personnel required for the Work.Intentionally omitted.

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.1 Salaries and other compensation of the Design-Builder’s personnel stationed at the Design-Builder’s principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;Section A.5.1.1 unless such personnel perform Work for the Project;

...

.5 Except as provided in Section A.5.1.6.3 of this Agreement, costsCosts due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

- ...
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be ~~exceeded~~ exceeded;
 - .8 Delay or damages claims except as provided otherwise in the A141.
 - .9 Storage costs, unless with prior written Owner approval.
 - .10 All costs intentionally deleted from Sections 5.2.1 through 5.2.9 above, including subsections.
- ...

§ A.5.3.1 ~~Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.~~ Design-Builder shall take advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and which conform to the Design-Build Documents, and any such discounts, rebates and refunds shall accrue to the Owner, subject to Owner paying Design-Builder in advance of such payments/invoices becoming due in time to get the discount.

...

The Design-Builder 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 the 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 Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of ~~three~~ five years after final payment, or for such longer period as may be required by law.

PAGE 11

Nicole Hardwick Superintendent

Matt Thompson President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Steve Williams, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:28:15 CT on 09/28/2020 under Order No. 2631405231 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)