

Shenandoah Community School District Board of Directors  
Shenandoah Administrative Board Room  
November 11, 2019 – 5:00 p.m.

Board Agenda

1. Call to Order
2. Roll Call and Determination of Quorum
3. Mission Statement: Read by Director Ritchey
  - a. *The Shenandoah Community School District, in partnership with families and the community, will provide each student an educational environment that maximizes his or her potential to become responsible, successful citizens and lifelong learners in an ever-changing world.*
4. Public Hearing – Shenandoah High School Renovations Project
5. Welcome to Audience
6. Public Forum
7. Administrative Reports
  - a. Community Project – Seed Saver & World Food Prize - Sarah F. Martin
  - b. Iowa Statewide Assessment of Student Progress - Kerri Nelson
8. Consent Agenda
  - a. Minutes
  - b. Treasurer's Report
    - i. Account Balances
    - ii. Unspent Authorized Budget Report
    - iii. Accounts Payable
  - c. Personnel Requests

Contracts:		
Aaron Burdorf	Head HS Softball Coach	\$5,256.00
Amber Fichter	PS Associate Level II/III	\$12.34/hr probationary
Frances Hughes	HS Associate Level II/III	\$12.34/hr probationary
Jon Weinrich	Asst. HS Softball Coach	\$3,653.00
Marcia Johnson	Asst. HS Girls Tennis	\$3,691.00
Randal Barnes	HS Associate Level II/III	\$12.34/hr probationary
Resignations:		
Crystal Dooley	HS Library Associate	effective Oct. 31, 2019
Tammy Vaill	Van Driver	effective Oct. 20, 2019
Modifications:		
Kayla Michaelson	Associate Level II/III to Level I	\$13.29/hr
  - d. Out of State Travel Request
    - i. High School Contemporary Affairs Class to Omaha Correction Center in Omaha, NE on 11/14/19.
  - e. Grant Request
    - i. Linda Laughlin - RPP Mini Grant Application to purchase equipment
  - f. Early Graduation Request (December 2019 pending all requirements are met):  
Kyrstin Miller

9. Action Items

- a. Approve Resolution Appointing Paying Agent, Bond Registrar, and Transfer Agent, Approving the Paying Agent, Bond Registrar and Transfer Agent Agreement and Authorizing the Execution of Same
- b. Approve Tax Exemption Certificate
- c. Approve Wire Transfer Agreement
- d. Approve Resolution Authorizing the Terms of Issuance and Providing for and Securing the Payment of School Infrastructure Sales, Services and Use Tax Revenue Bonds
- e. Approve Commissioning Agent and Proposal
  - i. Low Bid – IMEG @ \$93,700
- f. Approve Contract Document with CA Nelson Group

10. Informational Items

Next Regular Meeting – December 9, 2019 at 5:00 P.M.

11. Adjournment

**Shenandoah Community School District**  
**Minutes of the Regular Meeting of the Board of Directors – October 14, 2019**  
**Administration Board Room**

**Call to Order:**

Board President Jean Fichter called the meeting to order at 5:00 pm.

**Roll Call:**

Roll Call was answered by Directors Jean Fichter, Kathy Langley, Greg Ritchey, Timothy Smith and Adam Van Der Vliet. Also present were Superintendent Dr. Kerri Nelson, School Business Official Sherri Ruzek and Board Secretary Lisa Holmes.

**Mission Statement:**

The SCSD Mission Statement was read by Director Langley.

**Welcome to Audience:**

President Fichter welcomed everyone to the meeting.

**Open Forum:**

None

**Administrative Reports:**

**Financial Overview:** School Business Official Sherri Ruzek gave a presentation on where the district ended financial for FY19.

**Consent Agenda:**

Approve the consent agenda to include previous minutes, the financial accounts, the payment of bills, fundraising requests and out of state travel requests. Personnel Requests: Contracts: Cindy Sons, Elementary Associate Level II/III - \$12.34/hr probationary; Jordan Ross, Associate Level I - \$12.19/hr probationary; Tabitha Love, Associate Level I - \$12.19/hr probationary. Resignations: Chelsie Reynolds, HS Associate; Curtis Osborn, Asst. HS Baseball Coach. Modifications: Sonia Willers, Level I to Level II/III Associate - \$14.79/hr. Early Graduation Requests – December 2019 pending all requirements are met: Donald Ryan IV, Jayden Lutz. Open Enrollment Request – HS out to Clayton Ridge – deny due to late file and does not meet just cause; MV in from Sidney – deny due to late file and program requested is full. Motion by Director Ritchey, second by Director Van Der Vliet. Motion carried unanimously.

**Action Items:**

***Approve Allowable Growth and Supplemental State Aid for Special Education Deficit in the amount of \$203,855.18:***

Motion by Director Ritchey to approve, second by Director Langley. Motion carried unanimously.

***Approve Allowable Growth and Supplemental State Aid for Limited English Proficiency Program in the amount of \$57,827.66:***

Motion by Director Langley to approve, second by Director Ritchey. Motion carried unanimously.

***Approve Ahlers & Cooney as SAVE Bond Counsel:***

Motion by Director Van Der Vliet to approve, second by Director Ritchey. Motion carried unanimously.

***Approve Approximately \$5,800,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds – Series 2019 including Consideration of Financing Proposals Opened and Reviewed by***

***the Superintendent of Schools, Secretary of the Board and the Placement Agent and the Resolution Directing the Sale:***

Director Ritchey moved to approve the resolution directing the sale of \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019 to Branch Banking and Trust Company. Director Langley seconded the motion. Motion carried unanimously.

***Approve Design Development Project Submittal with DLR Group:***

Motion by Director Van Der Vliet, second by Director Smith. Motion carried unanimously.

***Approve the Design Development Budget Report with Carl A. Nelson and Company:***

Motion by Director Ritchey, second by Director Van Der Vliet. Motion carried unanimously.

***Set Public Hearing Date regarding HS Renovation Project funded using SAVE funds for November 11, 2019:***

Motion by Director Ritchey, second by Director Langley. Motion carried unanimously.

**Informational Items:**

Regular Meeting – November 11, 2019 at 5:00 pm.

**Adjournment:**

Motion by Director Langley, second by Director Van Der Vliet to adjourn the meeting at 5:54 pm. Motion carried unanimously.

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Board Secretary

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Board President

SHENANDOAH ACCOUNT BALANCES						
ACCOUNT	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
<b>General Fund (10)</b>						
Beg Balance Checking (Century)	\$385,028.81	\$16,713.86	\$39,613.60	-\$80,237.34		
Beg Balance Savings (Century)	\$3,452,321.16	\$2,961,633.25	\$2,408,233.08	\$2,698,633.71		
Revenues	\$139,866.08	\$275,659.53	\$1,276,172.26	\$2,058,639.45		
Expenditures	-\$1,048,809.69	-\$889,845.59	-\$1,011,518.98	-\$1,008,710.60		
End Balance Checking (Century)	\$16,713.86	\$39,613.60	-\$80,237.34	-\$55,663.63		
End Balance Savings (Century)	\$2,961,633.25	\$2,408,233.08	\$2,698,633.71	\$3,725,067.80		
<b>Total General Fund</b>	<b>\$2,978,347.11</b>	<b>\$2,447,846.68</b>	<b>\$2,618,396.37</b>	<b>\$3,669,404.17</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Management Fund (22)</b>						
Beg Balance Checking (Century)	\$2,502.74	\$3,419.07	\$14,855.73	-\$5,228.72		
Beg Balance Savings (Century)	\$609,822.39	\$609,822.39	\$429,197.11	\$534,590.64		
Revenues Checking	\$10,547.31	\$19,401.88	\$125,964.02	\$317,260.20		
Expenditures Checking	-\$69,088.58	-\$188,590.50	-\$35,426.22	-\$7,229.36		
End Balance Checking (Century)	\$3,419.07	\$14,855.73	-\$5,228.72	\$2,546.82		
End Balance Savings (Century)	\$609,822.39	\$429,197.11	\$534,590.64	\$836,845.94		
<b>Total Management Fund</b>	<b>\$613,241.46</b>	<b>\$444,052.84</b>	<b>\$529,361.92</b>	<b>\$839,392.76</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>SAVE Fund (33)</b>						
Beg Balance Checking (Century)	\$942,159.72	\$729,151.08	\$428,569.70	\$380,520.12		
Beg Balance Savings (Century)	\$1,243,509.22	\$1,298,438.57	\$1,355,420.46	\$1,412,143.30		
Revenues Checking	\$90,672.33	\$92,461.51	\$92,111.16	\$91,897.01		
Expenditures Checking	-\$248,751.62	-\$336,061.00	-\$83,437.90	-\$357,343.56		
End Balance Checking (Century)	\$729,151.08	\$428,569.70	\$380,520.12	\$232,191.76		
End Balance Savings (Century)	\$1,298,438.57	\$1,355,420.46	\$1,412,143.30	\$1,468,897.44		
<b>Total SAVE Fund</b>	<b>\$2,027,589.65</b>	<b>\$1,783,990.16</b>	<b>\$1,792,663.42</b>	<b>\$1,701,089.20</b>		
<b>PPEL Fund (36)</b>						
Beg Balance Checking (Century)	\$48,444.60	\$18,529.74	\$5,665.69	\$25.42		
Beg Balance Savings (Century)	\$41,099.68	\$43,575.97	\$175,742.28	\$219,116.00		
Revenues Checking	\$2,502.88	\$152,176.67	\$53,373.77	\$137,589.20		
Expenditures Checking	-\$29,941.45	-\$20,203.29	-\$15,640.32	-\$10,873.34		
Expenditures Accts Pay						
End Balance Checking (Century)	\$18,529.74	\$5,665.69	\$25.42	\$10,299.55		
End Balance Savings (Century)	\$43,575.97	\$175,742.28	\$219,116.00	\$161,685.40		
<b>Total PPEL Fund</b>	<b>\$62,105.71</b>	<b>\$181,407.97</b>	<b>\$219,141.42</b>	<b>\$171,984.95</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Debt Service Fund (40)</b>						
Beg Balance Checking (Century)	\$0.00	\$0.00	\$0.00			
Beg Balance Savings (Century)	\$135,436.35	\$144,150.18	\$0.00	\$3.70		
Beg Balance Fiscal Agent (Century)	\$470,235.14	\$129,926.38	\$164,747.49	\$199,588.67		
Revenues Checking	\$43,860.07	\$34,821.11	\$34,844.88	\$34,886.93		
Expenditures Checking	-\$375,455.00	-\$144,150.18	\$0.00			
Transfer						
End Balance Checking (Century)	\$0.00	\$0.00	\$0.00			
End Balance Savings (Century)	\$144,150.18	\$0.00	\$3.70	\$3.70		
End Balance Fiscal Agent (Century)	\$129,926.38	\$164,747.49	\$199,588.67	\$234,475.60		
<b>Total Debt Service Fund</b>	<b>\$274,076.56</b>	<b>\$164,747.49</b>	<b>\$199,592.37</b>	<b>\$234,479.30</b>		
<b>Total Checking Acct 1</b>	<b>\$767,813.75</b>	<b>\$488,704.72</b>	<b>\$295,079.48</b>	<b>\$189,374.50</b>		
<b>Total Savings Acct 1</b>	<b>\$5,057,620.36</b>	<b>\$4,368,592.93</b>	<b>\$4,864,487.35</b>	<b>\$6,192,500.28</b>		

**SHELANDOAH ACCOUNT BALANCES**

<b>Total Savings Acct 15</b>	<b>\$129,926.38</b>	<b>\$164,747.49</b>	<b>\$199,588.67</b>	<b>\$234,475.60</b>		
<b>Grand Total Acct 1</b>	<b>\$5,955,360.49</b>	<b>\$5,022,045.14</b>	<b>\$5,359,155.50</b>	<b>\$6,616,350.38</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Reconciliation</b>						
Bank Statement Checking (Centur	\$1,014,458.38	\$612,125.55	\$542,759.82	\$347,379.27		
Bank Statement Savings (Century	\$5,057,620.36	\$4,368,592.93	\$4,864,487.35	\$6,192,500.28		
Bank Statement Fiscal Agent (Cen	\$129,926.38	\$164,747.49	\$199,588.67	\$234,475.60		
Less Outstanding Checks	-\$247,848.26	-\$123,420.83	-\$247,680.34	-\$158,004.77		
Outstanding Deposits/GJE	\$1,203.63					
<b>Total Reconciliation</b>	<b>\$5,955,360.49</b>	<b>\$5,022,045.14</b>	<b>\$5,359,155.50</b>	<b>\$6,616,350.38</b>		
<b>Amount Reconciliation Off</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

<b>ACCOUNT</b>	<b>JULY</b>	<b>AUGUST</b>	<b>SEPTEMBER</b>	<b>OCTOBER</b>	<b>NOVEMBER</b>	<b>DECEMBER</b>
<b>Activity Fund (21)</b>						
Beg Balance Checking	\$14,068.48	\$11,577.34	\$2,894.10	-\$2,419.05		
Beg Balance Savings	\$73,453.53	\$83,267.07	\$89,279.98	\$128,712.66		
Revenues Savings	\$9,869.20	\$4,547.70	\$49,453.64	24854.3		
Expenditures Checking	-\$2,546.80	-\$8,481.83	-\$15,334.11	-\$31,538.64		
Expenditures Savings						
End Balance Checking	\$11,577.34	\$2,894.10	-\$2,419.05	\$11,181.97		
End Balance Savings	\$83,267.07	\$89,279.98	\$128,712.66	\$108,427.30		
<b>Total Activity Fund</b>	<b>\$94,844.41</b>	<b>\$92,174.08</b>	<b>\$126,293.61</b>	<b>\$119,609.27</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Scholarships (81)</b>						
Beg Balance Checking	\$248.00	\$0.00	-\$1,250.00	-\$75.00		
Beg Balance Savings	\$390,215.31	\$389,061.78	\$388,259.63	\$387,365.73		
Revenues Savings	\$198.47	\$197.85	\$185.10	\$171.00		
Expenditures Checking	-\$1,600.00	-\$2,250.00	\$0.00	-75		
Expenditures Savings						
End Balance Checking		-\$1,250.00	\$0.00	-\$75.00		
End Balance Savings	\$389,061.78	\$388,259.63	\$387,194.73	\$387,365.73		
<b>Total Scholarships</b>	<b>\$389,061.78</b>	<b>\$387,009.63</b>	<b>\$387,194.73</b>	<b>\$387,290.73</b>		
<b>Agency Fund (91)</b>						
Beg Bal Checking	\$595.66	\$595.66	\$595.66	\$590.78		
Beg Bal Savings	\$1,391.22	\$1,391.22	\$1,391.22	\$1,437.32		
Revenues Savings			\$46.10	\$0.00		
Expenditures Checking			-\$4.88	-\$153.20		
Expenditures Savings						
End Balance Checking	\$595.66	\$595.66	\$590.78	\$437.58		
End Balance Savings	\$1,391.22	\$1,391.22	\$1,437.32	\$1,437.32		
<b>Total Agency Fund</b>	<b>\$1,986.88</b>	<b>\$1,986.88</b>	<b>\$2,028.10</b>	<b>\$1,874.90</b>		
<b>Total Checking Acct 2</b>	<b>\$12,173.00</b>	<b>\$2,239.76</b>	<b>-\$1,828.27</b>	<b>\$11,544.55</b>		
<b>Total Savings Acct 2</b>	<b>\$473,720.07</b>	<b>\$478,930.83</b>	<b>\$517,344.71</b>	<b>\$497,230.35</b>		
<b>Grand Total Acct 2</b>	<b>\$485,893.07</b>	<b>\$481,170.59</b>	<b>\$515,516.44</b>	<b>\$508,774.90</b>		



**SHENANDOAH COMMUNITY SCHOOL DISTRICT  
EXPENDITURES TO CERTIFIED BUDGET COMPARISON  
JULY 1, 2019 - JUNE 30, 2020**

OCTOBER

	FUNCTION	GENERAL	MGMNT	TRUST	PPEL	EMG LEVY/ DISASTER	PERL	ACTIVITY
						RELIEF		
INSTRUCTION	1XXX	\$1,371,648.04	\$128,532.94	\$3,925.00				\$57,272.74
SUPPORT SERVICES	2XXX	\$1,079,337.67	\$177,030.44		\$236,269.86			
NON-INSTRUCTIONAL	3XXX							
FACILITIES ACQ & CONST	4XXX				\$10,902.56			
DEBT	5XXX							
AEA FLOW THROUGH	6100	\$156,416.00						
TRANSFERS								
	6900	\$653.22						
<b>TOTAL</b>		<b>\$2,607,401.71</b>	<b>\$305,563.38</b>	<b>\$3,925.00</b>	<b>\$247,172.42</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$57,272.74</b>
PUBLISHED BUDGET		\$13,668,222.00	\$432,000.00	\$0.00	\$845,000.00	\$0.00	\$0.00	\$250,000.00
% USED		19.08%	70.73%	0.00%	29.25%	0.00%	0.00%	22.91%

	FUNCTION	CAPITAL	DEBT	OTHER		TOTAL USED	PUB BUDGET	% OF BUDGET
		PROJECTS	SERVICE	NUTRITION	ENTERPRISE			
INSTRUCTION	1XXX				\$158.08	\$1,561,536.80	\$9,570,000.00	16.32%
SUPPORT SERVICES	2XXX	\$95,926.18				\$1,588,564.15	\$4,999,100.00	31.78%
NON-INSTRUCTION	3XXX			\$133,276.70		\$133,276.70	\$750,000.00	17.77%
FACILITIES ACQ & CONST	4XXX	\$402,954.45				\$413,857.01	\$2,565,000.00	16.13%
DEBT	5XXX					\$0.00	\$430,000.00	0.00%
AEA FLOW THROUGH	6100					\$156,416.00	\$507,222.00	30.84%
TRANSFER	62xx	\$138,786.00	\$144,150.18			\$282,936.18		
<b>TOTAL</b>		<b>\$637,666.63</b>	<b>\$144,150.18</b>	<b>\$133,276.70</b>	<b>\$158.08</b>	<b>\$4,136,586.84</b>	<b>\$18,821,322.00</b>	<b>21.98%</b>
PUBLISHED BUDGET		\$2,865,000.00	\$430,000.00	\$751,100.00	\$0.00			
% USED		22.26%	0.00%	17.74%	0.00%		21.98%	



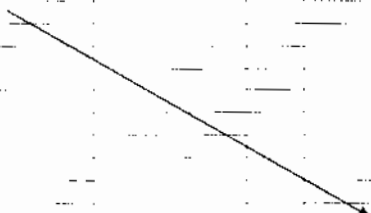
SHENANDOAH COMMUNITY SCHOOL  
CALCULATION OF MISCELLANEOUS INCOME  
2019-2020

	STATE AID/ SRCIPVR (CNI) Source Codes	TLC/FOUR YEAR-OLD STATE AID/TSS/ INTERVENTION/PD/ TRANSPORTATION Source Code	SPED DEFICIT SUPPLEMENTAL STATE AID Source Code	AEA FLOWTHROUGH Source Code	PROPERTY TAX Source Codes	INSTRUCTIONAL SUPPORT THROUGH INCOME SURTAXES Source Codes	EXCISE TAXES UTILITY REPL. Source Codes	** MISCELLANEOUS REVENUE	TOTAL REVENUE (Includes Flowthrough)	FY '19 Actuals
	3801, 3803, 3111	3116, 3117, 3119 3204, 3216, 3376	3113	3214	1110-1119	1134	1170-1179			
JUL				\$39,104.00				\$17,320.76	\$56,424.76	\$53,106.44
AUG				\$39,104.00	\$78,576.06			\$18,242.94	\$135,923.00	\$80,425.92
SEP	\$523,628.00	\$144,855.00		\$39,104.00	\$518,824.88		\$233.13	\$49,527.25	\$1,276,172.26	\$1,352,737.62
OCT	\$523,628.00	\$144,855.00		\$39,104.00	\$1,270,009.60		\$42,026.00	\$39,016.85	\$2,058,639.45	\$1,905,569.52
NOV								\$0.00		
DEC								\$0.00		
JAN								\$0.00		
FEB								\$0.00		
MAR								\$0.00		
APR								\$0.00		
MAY								\$0.00		
JUN								\$0.00		
<b>TOTAL</b>	<b>\$1,047,256.00</b>	<b>\$289,710.00</b>	<b>\$0.00</b>	<b>\$156,416.00</b>	<b>\$1,987,410.54</b>	<b>\$0.00</b>	<b>\$42,259.13</b>	<b>\$124,107.80</b>	<b>\$3,527,159.47</b>	<b>\$3,391,839.50</b>

\*\* Fill in STATE AID, INSTRUCTIONAL SUPPORT, FOUR YEAR-OLD PRESCHOOL, STATE FISCAL STABILIZATION, AEA FLOWTHROUGH, PROPERTY TAX, INCOME SURTAXES, EXCISE TAXES and TOTAL REVENUE columns. The MISC column will automatically be filled in and transferred to the UNSPENT AUTHORIZED BUDGET CALCULATION at the right

Yellow indicates a formula)

SRCIPVR = State Replacement for Commercial and Industrial Property Valuations Reduction



**SHENANDOAH COMMUNITY SCHOOL  
UNSPENT AUTHORIZED BUDGET CALCULATION  
2019-2020**

REGULAR PROGRAM DISTRICT COST	\$7,228,816.00		
+ REGULAR PROGRAM BUDGET ADJUSTMENT	\$138,542.00		
+ SUPPLEMENTARY WEIGHTING DISTRICT COST	\$140,441.00		
+ SPECIAL ED DISTRICT COST	\$941,184.00		
+ TEACHER SALARY SUMMPLEMENT DISTRICT COST	\$662,009.00		
+ PROF DEV SUPPLEMENT DISTRICT COST	\$71,623.00		
+ EARLY INTERVENTION SUPPL DISTRICT COST	\$84,109.00		
+ TEACHER LEADERSHIP SUPP DISTRICT COST	\$353,567.00		
+ AEA SPECIAL ED SUPPORT	\$358,589.00		
+ AEA SPECIAL ED SUPPORT ADJUSTMENT	\$1,831.00		
+ AEA MEDIA SERVICES	\$59,481.00		
+ AEA EDUCATIONAL SERVICES	\$65,755.00		
+ AEA SHARING DISTRICT COST	\$0.00		
+ AEA TEACHER SALARY SUPPL DISTRICT COST	\$37,007.00		
+ AEA PROF DEV SUPPL DISTRICT COST	\$3,959.00		
+ DROPOUT ALLOWABLE GROWTH	\$261,868.00		
+ SBRC ALLOWABLE GROWTH OTHER #1	\$0.00	Increased Enrollment	(Will have this number in December 2019)
+ SBRC ALLOWABLE GROWTH OTHER #2	\$57,828.00	LEP	
+ SPECIAL ED DEFICIT ALLOWABLE GROWTH	\$203,855.18	(Determined when I did the SES at time of CAR - September, 2019)	
- SPECIAL ED POSITIVE BALANCE REDUCTION	\$0.00		
- AEA SPECIAL ED POSITIVE BALANCE	\$0.00		
+ ALLOWANCE FOR CONSTRUCTION PROJECTS	\$0.00		
- UNSPENT ALLOWANCE FOR CONSTRUCTION	\$0.00		
+ ENROLLMENT AUDIT ADJUSTMENT	\$0.00		
- AEA PRORATA REDUCTION	\$57,385.00		
= MAXIMUM DISTRICT COST	\$10,613,079.18		
+ PRESCHOOL FOUNDATION AID	\$247,680.00		
+ INSTRUCTIONAL SUPPORT AUTHORITY	\$543,564.00		
+ ED IMPROVEMENT AUTHORITY	\$0.00		
+ OTHER MISCELLANEOUS INCOME	\$124,107.80	\$ 1,404,271.00	Estimate on Budget Worksheet This is a fluctuating #.
= UNSPENT AUTH BUDGET - PREVIOUS YEAR	\$3,370,221.00		
+ MAXIMUM AUTHORIZED BUDGET	\$14,898,651.98		
- EXPENDITURES	\$2,607,401.71	17.50%	
= UNSPENT AUTHORIZED BUDGET	\$12,291,250.27		

**EXPENDITURES**

	FY 20	FY 19 Actuals
JULY	\$199,722.68	\$217,436.62
AUGUST	\$387,449.45	\$345,176.12
SEPTEMBER	\$1,011,518.98	\$966,872.04
OCTOBER	\$1,008,710.60	\$982,143.04
NOVEMBER		
DECEMBER		
JANUARY		
FEBRUARY		
MARCH		
APRIL		
MAY		
JUNE		
<b>TOTAL</b>	<b>\$2,607,401.71</b>	<b>\$2,511,627.82</b>

MONTHLY BOARD VENDOR BILLS  
 NOVEMBER 2019 ACCOUNTS PAYABLE

Vendor Name	Invoice Detail Amount	Invoice Detail Description
Checking Account ID 20	Fund Number 61	SCHOOL NUTRITION FUND
EARTHGRAINS BAKING CO'S INC	1,266.58	SNF FOOD FOR THE FOODSERVICE PROGRAM
FAREWAY STORES	128.57	SNF FOOD FOR THE FOODSERVICE PROGRAM
MARTIN BROS DIST	30,541.28	SNF SUPPLIES
Fund Number 61	<u>31,936.43</u>	
Checking Account ID 20	31,936.43	
Checking Account ID 3	Fund Number 21	ACTIVITY FUND
ALEXANDER DIGHTON	110.00	GENERAL ATHLETICS OFFICIAL
ANDREW MURRAY	110.00	GENERAL ATHLETICS OFFICIAL
ANDY REGAN	130.00	GENERAL ATHLETICS OFFICIAL
BANK IOWA/CONNIE MCGINNIS	232.00	TRAVEL/GENERAL ATHLETICS
BPEI	25.00	STUDENT ENTRY & REGISTRATION FEES
CHAD BURCH	130.00	GENERAL ATHLETICS OFFICIAL
CINDY WILLIAMS	140.00	GENERAL ATHLETICS OFFICIAL
CUSTOMINK	454.51	SUPPLIES/NAHS
DENNY HOWARD	18.00	GENERAL ATHLETIC WORKERS
DISTRICT 8 FCCLA	40.00	DUES/FCCLA
DON'S JOHNS & SEPTIC PUMPING	85.50	MAY MENTORING ACT. STUD& STAFF ADMISSION
FAREWAY STORES	351.11	MUSTANG FIELD CONCESSION SUPPLIES
GREG PULLIAM	130.00	GENERAL ATHLETICS OFFICIAL
HI-POD	2,400.00	SUPPLIES/GENERAL ATHLETICS
HOWARD SPORTING GOODS	1,258.00	SUPPLIES/FOOTBALL
JOHN NAHNSEN	100.00	GENERAL ATHLETICS OFFICIAL
MATT HOBBIIE	130.00	GENERAL ATHLETICS OFFICIAL
MONTY ROLLINS	140.00	GENERAL ATHLETICS OFFICIAL
OMNI CHEER	105.80	SUPPLIES/CHEERLEADERS
OSBORN, CURTIS	70.00	GENERAL ATHLETICS OFFICIAL
PRESTON LAWSON	18.00	GENERAL ATHLETIC WORKERS
RENEE KETTWICK	100.00	GENERAL ATHLETICS OFFICIAL
RIEMAN MUSIC DES MOINES	427.03	RESALE/MS MARCHING MUSTANGS
ROCSTOP - WHITEHILLS	480.00	MUSTANG FIELD CONCESSION SUPPLIES
RON HANSEN	18.00	GENERAL ATHLETIC WORKERS
RYAN HIGGINS	110.00	GENERAL ATHLETICS OFFICIAL
RYAN MATHENY	18.00	GENERAL ATHLETIC WORKERS
SHANE BARSELL	110.00	GENERAL ATHLETICS OFFICIAL
SHENANDOAH CSD	569.06	GENERAL ATHLETIC WORKERS
TARKIO FFA	<u>6,208.52</u>	TRAVEL/FFA
Fund Number 21	<u>14,218.53</u>	
Checking Account ID 3	14,218.53	
Checking Account ID 30	Fund Number 10	GENERAL FUND
AHLERS & COONEY PC	854.00	LAWYER/NEGOTIATIONS
ASSETGENIE, INC.	409.75	TECH REPAIR & MAINTENANCE SUPPLIES
BARBARA FARWELL	226.32	ESL TRAVEL
BEHAVEN KIDS - OMAHA	250.00	LVL 3 DIAGNOSTIC EVALUATION
CAPITAL SANITARY SUPPLY	1,200.00	CUSTODIAL SUPPLIES
CDW GOVERNMENT	209.96	TECHNOLOGY COMPUTERS
CENEX FLEET FUELING	5,948.90	MAINTENANCE GASOLINE
CENTERPOINT ENERGY	485.35	UTILITIES-GAS
CENTURYLINK	407.37	BUSINESS MANAGER TELEPHONE
CHAIR SLIPPERS	531.99	MAINTENANCE BUILDING SUPPLIES
CHAT MOBILITY	101.89	BUSINESS MANAGER TELEPHONE
CITY OF SHENANDOAH	16,987.60	WATER-SEWER
CORNHUSKER INTERNATIONAL TRUCKS	26.72	TRANSPORTATION REPAIR PARTS
CULLIGAN WATER	162.00	MAINTENANCE SUPPLIES
DINGES AUTO GLASS	80.00	VEHICLE REPAIR SERVICES
DOUG MEYER CHEVROLET	478.10	VEHICLE REPAIR SERVICES

**MONTHLY BOARD VENDOR BILLS**  
**NOVEMBER 2019 ACCOUNTS PAYABLE**

Vendor Name	Invoice Amount	Invoice Detail Description
FATHER FLANAGANS BOYS HOME	7,506.70	EQ PRCF DEV STAFF WORKSHOP/CONF REG
FELD FIRE	405.00	OTHER PURCHASED PROPERTY SERVICES
FIRST	821.00	TAG TECH RELATED SOFTWARE / CURRICULUM
GRIZZLY INDUSTRIAL	114.84	HS IND ARTS RESALE INVENTORY
HOUGHTON MIFFLIN	3,171.00	EARLY LITERACY SOFTWARE
HOWARD SPORTING GOODS	80.00	HS PRINCIPAL FUNDRAISER SUPPLIES
IOWA COMMUNICATIONS NETWORK	623.73	HS PRINCIPAL TELEPHONE
IOWA WESTERN COMMUNITY COLLEGE	100.00	NON INSTRUCTION STAFF WORKSHOP/CONF REG
JAY DRUG	45.40	ELEM NURSE SUPPLIES
JB PARTS & SUPPLY	37.80	MAINTENANCE SUPPLIES
JB PARTS AND SUPPLY	152.68	CARL PERKINS SUPPLIES
JOHN GOWING PLUMBING AND HEATING INC.	195.00	MAINTENANCE BUILDING REPAIR SERVICES
JULIANE LAROCK	10.85	ELEM SPED LVL III TRAVEL
KMA BROADCASTING, LP	2,500.00	BOARD ADVERTISING
MCNEILLY STEEL BUILDING	32.10	TRANSPORTATION SUPPLIES
MEDICAL ENTERPRISES	655.00	BUS DRIVER DRUG TESTING
MIDAMERICAN ENERGY	12,746.90	UTILITIES-ELECTRICITY
MILLER BUILDING	661.00	MAINTENANCE SUPPLIES
MITEL NET SOLUTIONS	550.23	HS PRINCIPAL TELEPHONE
NASCO	40.30	CARL PERKINS SUPPLIES
NISHNA VALLEY CAFE	500.40	MENTOR DUES & FEES
O'REILLY AUTO	536.49	TRANSPORTATION SUPPLIES
OHIO STATE UNIVERSITY, THE	1,799.32	CARL PERKINS SUPPLIES
ORME ELECTRIC	9.69	MAINTENANCE SUPPLIES
PETERSEN AUTO	1,400.92	VEHICLE REPAIR SERVICES
RIEMAN MUSIC DES MOINES	716.75	MS BAND EQUIPMENT REPAIR
RIVERSIDE INSIGHTS	1,633.84	TAG TESTING
ROCSTOP - WHITEHILLS	25.18	TRANSPORTATION GASOLINE
ROCSTOP CARDTROL	140.00	TRANSPORTATION GASOLINE
ROGERS PEST CONTROL LLC	230.00	MAINTENANCE PEST CONTROL CONTRACTED
SCHOLASTIC MAGAZINES	9.49	SPED SUPPLIES
SCHOOL ADMINISTRATORS OF IOWA	550.00	ELEM PRINCIPAL DUES
SCHOOL HEALTH	187.28	SCHOOL NURSE MEDICAID SUPPLIES
SHAFFER, JASON	1,580.00	TUITION REIMBURSEMENT
SHENANDOAH ACTIVITY FUND	185.00	RPP TRAVEL
SHENANDOAH SANITATION	1,004.20	MAINTENANCE GARBAGE COLLECTION
SIGNS & SHINES	27.50	TRANSPORTATION SUPPLIES
SOUTHWESTERN COMM COLLEGE	30.00	NON INSTRUCTION STAFF WORKSHOP/CONF REG
SPELLINGCITY.COM, INC.	69.95	GENERAL SUPPLIES
STEVEN COLE	100.00	TRANSPORTATION SUPPLIES
SUPPLYWORKS	7,479.66	CUSTODIAL SUPPLIES
TEACHER INNOVATIONS, INC.	300.00	MS PD SUPPLIES
TRUCK CENTER COMPANIES	9.86	TRANSPORTATION REPAIR PARTS
UNITED CULTURES INC	285.00	JEANS - SUPPLIES
UPS	101.00	TECH REPAIR & MAINTENANCE SUPPLIES
VETTER EQUIPMENT CO	6.67	MAINTENANCE SUPPLIES
WELLMARK BLUE CROSS BLUESHEILD	106,897.00	HEALTH INSURANCE PAYABLE CN
Fund Number 10	184,624.68	
Checking Account ID 30	Fund Number 22	MANAGEMENT FUND
WELLMARK BLUE CROSS BLUESHETLD	5,228.72	EARLY RETIREES MEDICAL INSURANCE
WILSON INSURANCE AGENCY	5,666.00	WORKER COMPENSATION
Fund Number 22	10,894.72	
Checking Account ID 30	Fund Number 33	SAVE (SECURE AN ADVANCED VISION FOR ED.
CAMBLIN MECHANICAL	2,200.00	HVAC SYSTEM
CONTROL MANAGEMENT, INC.	696.75	HVAC SYSTEM

Shenandoah CSD  
 11/06/2019 02:40 PM  
 Vendor Name

**MONTHLY BOARD VENDOR BILLS**  
**NOVEMBER 2019 ACCOUNTS PAYABLE**

Page: 3  
 User ID: RUZEKSHE

Vendor Name	Invoice Detail Amount	Invoice Detail Description
DLR GROUP	70,450.35	ARCHITECT SERVICE
SHENANDOAH SANITATION	1,140.13	OTHER CONSTRUCTION
SNYDER & ASSOCIATES	1,792.50	ARCHITECT SERVICE
Fund Number 33	<u>76,279.73</u>	
Checking Account ID 30	Fund Number 36	PHYSICAL PLANT & EQUIPMENT
AMPLIFIED IT	1,277.10	TECH RELATED SOFTWARE
BLUPOINTE DRS	750.00	TECH RELATED SOFTWARE
COUNSEL OFFICE & DOCUMENT	2,632.49	ADMIN COPIER LEASE
CULLIGAN WATER	243.47	RENTAL OF EQUIPMENT & VEHICLES
ELEVATE ROOFING	3,028.00	OTHER PURCHASED PROPERTY SERVICES
FES	4,995.00	TECH RELATED SOFTWARE
FOLLETT SCHOOL SOLUTIONS INC	866.72	TECH RELATED SOFTWARE
GREAT AMERICAN FINANCIAL SERVICES	1,064.38	ELEMENTARY COPIER LEASE
Fund Number 36	<u>14,857.16</u>	
Checking Account ID 30	<u>286,656.29</u>	

November 11, 2019

The Board of Directors of the Shenandoah Community School District, State of Iowa, met in \_\_\_\_\_ session, in the Administration Building Board Room, 304 West Nishna Road, Shenandoah, Iowa 51601, at 5:00 P.M., on the above date. There were present President \_\_\_\_\_, in the chair, and the following named Board Members:

\_\_\_\_\_

Absent: \_\_\_\_\_

Vacant: \_\_\_\_\_

\* \* \* \* \*

Board Member \_\_\_\_\_ introduced the following Resolution entitled "RESOLUTION APPOINTING PAYING AGENT, BOND REGISTRAR, AND TRANSFER AGENT, APPROVING THE PAYING AGENT, BOND REGISTRAR AND TRANSFER AGENT AGREEMENT AND AUTHORIZING THE EXECUTION OF SAME" and moved its adoption. Board Member \_\_\_\_\_ seconded the motion to adopt. The roll was called, and the vote was:

AYES: \_\_\_\_\_

\_\_\_\_\_

NAYS: \_\_\_\_\_

The President declared the Resolution adopted.

\*\*\*\*\*

Board Member \_\_\_\_\_ moved that the form of Tax Exemption Certificate be placed on file and approved. Board Member \_\_\_\_\_ seconded the motion. The roll was called, and the vote was:

AYES: \_\_\_\_\_

\_\_\_\_\_

NAYS: \_\_\_\_\_

The President declared the Motion adopted.

\*\*\*\*\*

Board Member \_\_\_\_\_ moved that the Wire Transfer Agreement be approved and the President and Secretary of the School Board are authorized to sign the Agreement on behalf of the District. Board Member \_\_\_\_\_ seconded the motion. The roll was called and the vote was,

AYES: \_\_\_\_\_  
\_\_\_\_\_

NAYS: \_\_\_\_\_

The President declared the Motion adopted.

\* \* \* \* \*

Board Member \_\_\_\_\_ introduced the following Resolution entitled "RESOLUTION AUTHORIZING AND PROVIDING FOR THE TERMS OF ISSUANCE AND SECURING THE PAYMENT OF \$5,679,000 SCHOOL INFRASTRUCTURE SALES, SERVICES AND USE TAX REVENUE BONDS, SERIES 2019, OF THE SHENANDOAH COMMUNITY SCHOOL DISTRICT, STATE OF IOWA, UNDER THE PROVISIONS OF CHAPTERS 423E AND 423F OF THE CODE OF IOWA, AND PROVIDING FOR A METHOD OF PAYMENT OF SAID BONDS," and moved its adoption. Board Member \_\_\_\_\_ seconded the motion to adopt. The roll was called, and the vote was:

AYES: \_\_\_\_\_  
\_\_\_\_\_

NAYS: \_\_\_\_\_

The President declared the Resolution adopted.

\* \* \* \* \*



RESOLUTION APPOINTING UMB BANK, N.A. TO SERVE AS PAYING AGENT, BOND REGISTRAR, AND TRANSFER AGENT, APPROVING THE PAYING AGENT, BOND REGISTRAR AND TRANSFER AGENT AGREEMENT AND AUTHORIZING THE EXECUTION OF SAME

WHEREAS, pursuant to the provisions of Iowa Code Section 423E.5 and Chapter 423F, \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019 (the "Bonds"), dated the date of delivery, have been sold and action should now be taken to provide for the maintenance of records, registration of Bonds and payment of principal and interest in connection with the issuance of the Bonds; and

WHEREAS, this Board has deemed that the services offered by UMB Bank, N.A. are necessary for compliance with rules, regulations, and requirements governing the registration, transfer and payment of registered Bonds; and

WHEREAS, a Paying Agent, Bond Registrar and Transfer Agent Agreement (hereafter "Agreement") has been prepared to be entered into between the School Board and UMB Bank, N.A.:

NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF DIRECTORS OF THE SHENANDOAH COMMUNITY SCHOOL DISTRICT:

Section 1. That UMB Bank, N.A. is appointed to serve as Paying Agent, Bond Registrar, and Transfer Agent in connection with the issuance of \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019, dated the date of delivery.

Section 2. That the Agreement with UMB Bank, N.A. is approved and that the President and Secretary of the Board of Directors are authorized to sign the Agreement on behalf of the School District.

PASSED AND APPROVED this 11<sup>th</sup> day of November, 2019.

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President of the Board of Directors

ATTEST:

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Secretary of the Board of Directors

RESOLUTION AUTHORIZING AND PROVIDING FOR THE TERMS OF ISSUANCE AND SECURING THE PAYMENT OF \$5,679,000 SCHOOL INFRASTRUCTURE SALES, SERVICES AND USE TAX REVENUE BONDS, SERIES 2019, OF THE SHENANDOAH COMMUNITY SCHOOL DISTRICT, STATE OF IOWA, UNDER THE PROVISIONS OF CHAPTERS 423E AND 423F OF THE CODE OF IOWA, AND PROVIDING FOR A METHOD OF PAYMENT OF SAID BONDS

WHEREAS, pursuant to Iowa Code Chapters 423E and 423F, the Board of Directors of the Shenandoah Community School District, State of Iowa, (the "Issuer" or "School District") is currently entitled to receive proceeds of a statewide sales, services and use tax for school infrastructure, the revenue from which is deposited into the State Secure an Advanced Vision for Education Fund and distributed to the Issuer pursuant to Iowa Code Section 423F.2, as amended, and which taxes are and will continue to be collected as set forth therein and said revenues have not been pledged and are available for the payment of revenue bonds, subject to the following premises; and

WHEREAS, pursuant to Iowa Code Chapters 423E and 423F, and an election duly held in accordance therewith on September 8, 2009, the Board of Directors of the Shenandoah Community School District, State of Iowa, is currently entitled to spend School Infrastructure Tax Revenues for "school infrastructure" purposes; and

WHEREAS, the School District has complied with the provisions of Iowa Code Section 423F.4 by holding a public hearing on September 9, 2019, with notice published not less than ten nor more than twenty days ahead of that hearing, and did not receive a petition requesting an election on the question of issuing the Bonds; and

WHEREAS, to improve, remodel, repair, furnish and equip the high school facility and site, including HVAC, energy efficiency, accessibility, technology, safety and parking improvements are hereby found and declared to be eligible "school infrastructure projects" within the meaning of the proposition approved by the electors of the Issuer, and the designated portion of the School Infrastructure Sales, Services and Use Tax Revenue to be used for such projects shall be allocated first to the repayment of School Infrastructure Sales, Services and Use Tax Revenue Bonds issued for the purposes of the Project (as hereinafter defined); and

WHEREAS, Issuer proposes to issue its School Infrastructure Sales Services and Use Tax Revenue Bonds, Series 2019, in the amount of \$5,679,000 (the "Bonds") for the purpose of defraying the costs of the Project, and to pay costs of issuance; and

WHEREAS, in the Prior Bond Resolution (as hereinafter defined) authorizing the issuance of the Outstanding Bonds (as hereinafter defined), it is provided that additional School Infrastructure Sales, Services and Use Tax Revenue Bonds may be issued on a parity with the Outstanding Bonds, provided that there has been procured and placed on file with the Secretary of the Board of Directors, a statement complying with the conditions and limitations therein imposed upon the issuance of said Parity Bonds; and

WHEREAS, pursuant to the provisions of Iowa Code Chapters 423E and 423F, the above-mentioned Bonds were authorized to be issued and sold and action should now be taken to issue the Bonds conforming to the terms and conditions of the best bid received at the sale.

NOW, THEREFORE, IT IS RESOLVED BY THE BOARD OF DIRECTORS OF THE SHENANDOAH COMMUNITY SCHOOL DISTRICT IN THE COUNTIES OF PAGE, FREMONT, MONTGOMERY, AND MILLS, STATE OF IOWA:

Section 1. Definitions. The following terms with or without capitalization shall have the following meanings in this Resolution unless the text expressly or by necessary implication requires otherwise:

- "Act" shall mean Iowa Code Chapters 423E and 423F, as from time to time amended and supplemented.
- "Additional Bonds" shall mean any school infrastructure sales, services and use tax revenue bonds issued on a parity with the Bonds in accordance with the provisions of this Resolution.
- "Bond(s)" shall mean \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019, authorized to be issued by this Resolution.
- "Bond Fund" shall mean the Sinking Fund.
- "Bond Proceeds" shall mean the amount actually received from the sale of the Bonds and paid to the Issuer on the Closing Date.
- "Closing Date" shall mean the date of the delivery of the Bonds in exchange for the agreed upon purchase price.
- "Debt Service Fund" shall mean the Sinking Fund.
- "Economic Refunding" shall mean the sale and issuance of refunding bonds issued to discharge and satisfy all or a part of the Bonds or the Outstanding Bonds in accordance with Section 19 of this Resolution, and to pay costs of issuance. The refunding must (i) produce annual debt service on the refunding bonds not greater than the total (remaining) debt service on the refunded bonds; (ii) shall not have a payment in any Fiscal Year (through maturity of the new bonds) that is greater than the payment on the Bonds or Outstanding Bonds being refunded, and (iii) shall not extend the final maturity of the refunded bonds.
- "Fiscal Year" shall mean the twelve-month period beginning on July 1 of each year and ending on the last day of June of the following year, or any other consecutive twelve-month period adopted by the Governing Body or by law as the official accounting period of the Issuer. Requirements of a Fiscal Year as expressed in this Resolution shall exclude any payment of principal or interest falling due on the first day of the Fiscal Year and include any payment of principal or interest falling due on the first day of the

succeeding Fiscal Year, except to the extent of any conflict with the terms of the Outstanding Bonds while the same remain outstanding.

- "Governing Body" shall mean the Board of Directors of the School District.
- "Independent Auditor" shall mean an independent firm of Certified Public Accountants, an independent financial advisor, or the Auditor of State.
- "Issuer" and "School District" shall mean the Shenandoah Community School District.
- "Original Purchaser" shall mean Branch Banking and Trust Company, a North Carolina Banking Corporation.
- "Outstanding Bonds" shall mean the \$4,680,000 School Infrastructure Sales, Service and Use Tax Revenue Refunding Bonds, Series 2016, dated June 13, 2016, issued in accordance with the Prior Bond Resolution, of which \$3,720,000 of the bonds are still outstanding and unpaid and remain a lien on the School Infrastructure Tax Revenues.
- "Parity Bonds" shall mean School Infrastructure Sales, Services and Use Tax Revenue Bonds, notes or other obligations payable solely from the School Infrastructure Tax Revenues on an equal basis with the Bonds herein authorized to be issued and shall include Additional Bonds as authorized to be issued under the terms of this Resolution.
- "Paying Agent" shall mean UMB Bank, N.A., or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein as Issuer's agent to provide for the payment of principal of and interest on the Bonds as the same shall become due.
- "Permitted Investments" shall mean any investments permitted in Iowa Code Chapter 12B or Section 12C.9. All interim investments must mature before the date on which the moneys are required for payment of principal and interest on the Bonds or project costs.
- "Prior Bond Resolution" shall mean a certain resolution adopted by the Issuer on May 23, 2016 authorizing the issuance of the Outstanding Bonds.
- "Project" shall mean a school infrastructure project as authorized by the electors at the election held September 8, 2009 and the Act, including to improve, remodel, repair, furnish and equip the high school facility and site, including HVAC, energy efficiency, accessibility, technology, safety and parking improvements.
- "Project Fund" shall mean the fund required to be established by this Resolution for the deposit of the proceeds of the Bonds.
- "Rebate Fund" shall mean the fund so defined in and established pursuant to the Tax Exemption Certificate and as provided in Section 21 of this Resolution.

- "Registrar" shall mean UMB Bank, N.A. or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein with respect to maintaining a register of the owners of the Bonds. Unless otherwise specified, the Registrar shall also act as Transfer Agent for the Bonds.

- "Reserve Fund" shall mean the reserve fund established in Section 15 of this Resolution.

- "Reserve Fund Requirement" shall mean an amount equal to the lesser of (a) the maximum amount of the principal and interest coming due on the Parity Bonds secured by the Reserve Fund; (b) 10% of the stated principal amount of the Parity Bonds secured by the Reserve Fund (for issues with original issue discount the issue price as defined in the Tax Exemption Certificate shall be substituted for the stated principal amount) or (c) 125% of the average principal and interest coming due on the Parity Bonds secured by the Reserve Fund. For purposes of this definition: (1) "issue price" shall be substituted for "stated principal amount" for issues with original issue discount or original issue premium of more than a de minimus amount and (2) stated principal amount shall not include any portion of an issue refunded or advance refunded by a subsequent issue.

- "Revenue Fund" shall mean the revenue fund established in Section 15 of this Resolution.

- "School Infrastructure Tax" shall mean the School District's portion of the one percent (1%) sales, services and use tax imposed by the State of Iowa for school infrastructure purposes which must be deposited into the State Secure an Advanced Vision for Education Fund and distributed to the School District pursuant to Iowa Code Section 423F.2, as amended.

- "School Infrastructure Tax Revenues" shall mean all of the revenues received by the School District in each Fiscal Year from the imposition of the School Infrastructure Tax (including, without limitation, any revenues received by the School District from interest and penalties on delinquent collections of the School Infrastructure Tax).

- "Secretary" shall mean the Secretary of the Board of Directors of the School District, or such other officer of the successor Governing Body as shall be charged with substantially the same duties and responsibilities.

- "Sinking Fund" shall mean the Sinking Fund established in Section 15 of this Resolution.

- "State" shall mean the State of Iowa

- "Tax Exemption Certificate" shall mean the Tax Exemption Certificate executed by the Treasurer and delivered at the time of issuance and delivery of the Bonds.

- "Treasurer" shall mean the Treasurer of the School District or such other officer as shall succeed to the same duties and responsibilities with respect to the recording and payment of the Bonds issued hereunder.

- "Yield Restricted" shall mean required to be invested at a yield that is not materially higher than the yield on the Bonds under Section 148(a) of the Internal Revenue Code or regulations issued thereunder.

Section 2. Authority. The Bonds authorized by this Resolution shall be issued pursuant to Iowa Code Section 423E.5 and Iowa Code Chapter 423F and be in compliance with all applicable provisions of the Constitution and laws of the State of Iowa.

Section 3. Authorization and Purpose. There shall be issued negotiable, fully registered, School Infrastructure Sales, Services and Use Tax Revenue Bonds of the Shenandoah Community School District, in the of Counties of Page, Fremont, Montgomery, and Mills, State of Iowa, in the aggregate amount of \$5,679,000 for the purpose of paying costs of the Project and costs of issuance.

Section 4. Source of Payment. The Bonds herein authorized and the interest thereon shall be payable solely and only from the School Infrastructure Tax Revenues and shall be a first lien on the future School Infrastructure Tax Revenues received by the School District under the Act. The Bonds shall not be general obligations of the Issuer nor shall the Issuer's full faith and credit and taxing power be pledged to the payment thereof. The Issuer is not obligated to levy any ad valorem taxes nor to expend any moneys of the Issuer to pay the Bonds, except the School Infrastructure Tax Revenues pledged under this Resolution. The Issuer shall be in no manner liable by reason of the failure of the School Infrastructure Tax Revenues to be sufficient for the payment of the Bonds.

Section 5. Bond Details. School Infrastructure Sales, Services and Use Tax Revenue Bonds of the School District in the amount of \$5,679,000 are issued pursuant to the provisions of Iowa Code Section 423E.5 and Iowa Code Chapter 423F for the aforesaid purposes, and the provisions of a subsequent purchase agreement which is approved and made a part hereof by reference. The Bonds shall be designated "SCHOOL INFRASTRUCTURE SALES, SERVICES AND USE TAX REVENUE BOND, SERIES 2019," be dated the date of delivery, and bear interest from the date thereof, until payment thereof, at the office of the Paying Agent, said interest payable on July 1, 2020 and semiannually thereafter on the 1st day of January and July in each year until maturity at the rates hereinafter provided.

The Bonds shall be executed by the manual or facsimile signature of the President and attested by the manual or facsimile signature of the Secretary, and shall be fully registered as to both principal and interest as provided in this Resolution; principal, interest and premium, if any shall be payable at the office of the Paying Agent by mailing of a check, wire, or electronic funds transfer to the registered owner of the Bond. The Bonds shall be in the denomination of \$100,000 or integral multiples of \$1,000 in excess thereof. Said Bonds shall mature and bear interest as follows:

<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
\$5,679,000	2.130%	January 1, 2031 <sup>(1)</sup>

<sup>(1)</sup>Term Bonds Maturing January 1, 2031. Bonds in the aggregate principal amount of \$5,679,000 shall be issued as Term Bonds maturing as to principal on January 1, 2031, shall bear interest at 2.130% per annum and shall be subject to mandatory redemption and payment at par and accrued interest in the principal amounts in each of the years as set forth as follows:

The 2031 Term Bonds

<u>Principal Amount of Mandatory Redemption</u>	<u>Interest Rate</u>	<u>Date of Redemption</u>
\$437,000	2.130%	July 1, 2020
\$395,000	2.130%	July 1, 2021
\$406,000	2.130%	July 1, 2022
\$413,000	2.130%	July 1, 2023
\$425,000	2.130%	July 1, 2024
\$432,000	2.130%	July 1, 2025
\$439,000	2.130%	July 1, 2026
\$447,000	2.130%	July 1, 2027
\$460,000	2.130%	July 1, 2028
\$469,000	2.130%	July 1, 2029
\$898,000	2.130%	July 1, 2030
\$458,000	2.130%	January 1, 2031*

*\*Final Maturity*

Section 6. Optional Redemption. Bonds maturing on or after July 1, 2025, may be called for optional redemption by the Issuer on that date, and on any principal or interest payment date thereafter and paid before maturity from any funds regardless of the source, in whole only and not in part, by giving thirty days' written notice of redemption to the registered owner of the Bond at the address shown on the books of the Registrar. Failure to give such written notice to any registered owner of the Bonds or any defect therein shall not affect the validity of any proceedings for the redemption of the Bonds. The terms of redemption will be par, plus accrued interest to date of call. Written notice will be deemed completed upon transmission to the owner of record of the Bond.

Section 7. Registration of Bonds; Appointment of Registrar; Transfer; Ownership; Delivery; and Cancellation.

a) Registration. The ownership of Bonds may be transferred only by the making of an entry upon the books kept for the registration and transfer of ownership of the Bonds (the "Registration Books"), and in no other way. UMB Bank, N.A. is hereby appointed as

Bond Registrar under the terms of this Resolution and under the provisions of a separate agreement with the Issuer filed herewith which is made a part hereof by this reference. The Registrar shall maintain the books of the Issuer for the registration of ownership of the Bonds and for the payment of principal of and interest on the Bonds as provided in this Resolution. All Bonds shall be negotiable as provided in Article 8 of the Uniform Commercial Code, subject to the provisions for registration and transfer contained in the Bonds and in this Resolution.

b) Transfer. The ownership of any Bond may be transferred only upon the Registration Books kept for the registration and transfer of Bonds and only upon surrender thereof at the office of the Registrar together with an assignment duly executed by the holder or his duly authorized attorney in fact in such form as shall be satisfactory to the Registrar, along with the address and social security number or federal employer identification number of such transferee (or, if registration is to be made in the name of multiple individuals, of all such transferees). In the event that the address of the registered owner of a Bond (other than a registered owner which is the nominee of the broker or dealer in question) is that of a broker or dealer, there must be disclosed on the Registration Books the information pertaining to the registered owner required above. Upon the transfer of any such Bond, a new fully registered Bond, of any denomination or denominations permitted by this Resolution in aggregate principal amount equal to the unmatured and unredeemed principal amount of such transferred fully registered Bond, and bearing interest at the same rate and maturing on the same date or dates shall be delivered by the Registrar.

c) Registration of Transferred Bonds. In all cases of the transfer of the Bonds, the Registrar shall register, at the earliest practicable time, on the Registration Books, the Bonds, in accordance with the provisions of this Resolution.

d) Ownership. As to any Bond, the person in whose name the ownership of the same shall be registered on the Registration Books of the Registrar shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of any such Bonds and the premium, if any, and interest thereon shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

e) Cancellation. All Bonds which have been redeemed shall not be reissued but shall be canceled by the Registrar. All Bonds which are canceled by the Registrar shall be destroyed and a certificate of the destruction thereof shall be furnished promptly to the Issuer; provided that if the Issuer shall so direct, the Registrar shall forward the canceled Bonds to the Issuer.

f) Non-Presentation of Bonds. In the event any payment check, wire, or electronic transfer of funds representing payment of principal of or interest on the Bonds is returned to the Paying Agent or is not presented for payment of principal at the maturity or redemption date, if funds sufficient to pay such principal of or interest on Bonds shall have been made available to the Paying Agent for the benefit of the owner thereof, all liability of the Issuer to the owner thereof for such interest or payment of such Bonds shall forthwith



cease, terminate and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the owner of such Bonds who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Resolution or on, or with respect to, such interest or Bonds. The Paying Agent's obligation to hold such funds shall continue for a period equal to two years' interest or principal became due, whether at maturity, or at the date fixed for redemption thereof, or otherwise, at which time the Paying Agent, shall surrender any remaining funds so held to the Issuer, whereupon any claim under this Resolution by the Owners of such interest or Bonds of whatever nature shall be made upon the Issuer.

Section 8. Reissuance of Mutilated, Destroyed, Stolen or Lost Bonds. In case any outstanding Bond shall become mutilated or be destroyed, stolen or lost, the Issuer shall at the request of Registrar authenticate and deliver a new Bond of like tenor and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond to Registrar, upon surrender of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Registrar and Issuer that such Bond has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Registrar and Issuer with satisfactory indemnity and complying with such other reasonable regulations as the Issuer or its agent may prescribe and paying such expenses as the Issuer may incur in connection therewith.

Section 9. Record Date. Payments of principal and interest, otherwise than upon full redemption, made in respect of any Bond, shall be made to the registered holder thereof or to their designated agent as the same appear on the books of the Registrar on the 15th day of the month preceding the payment date. All such payments shall fully discharge the obligations of the Issuer in respect of such Bonds to the extent of the payments so made. Upon receipt of the final payment of principal, the holder of the Bond shall surrender the Bond to the Paying Agent.

Section 10. Execution, Authentication and Delivery of the Bonds. Upon the adoption of this Resolution, the President and Secretary shall execute the Bonds by their manual or authorized signature and deliver the Bonds to the Registrar, who shall authenticate the Bonds and deliver the same to or upon order of the Original Purchaser. No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless the Registrar shall duly endorse and execute on such Bond a Certificate of Authentication substantially in the form of the Certificate herein set forth. Such Certificate upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly issued under this Resolution and that the holder thereof is entitled to the benefits of this Resolution.

Section 11. Right to Name Substitute Paying Agent or Registrar. Issuer reserves the right to name a substitute, successor Registrar or Paying Agent upon giving prompt written notice to each registered bondholder.

Section 12. Form of Bond. Bonds shall be printed substantially in the form as follows:

(Form of Bond)

"Registered"

"Registered"

R-1

\$5,679,000

**STATE OF IOWA  
SHENANDOAH COMMUNITY SCHOOL DISTRICT  
COUNTIES OF PAGE, FREMONT, MONTGOMERY, AND MILLS  
SCHOOL INFRASTRUCTURE SALES, SERVICES AND  
USE TAX REVENUE BONDS, SERIES 2019,  
DATED THE DATE OF DELIVERY**

<u>Rate</u>	<u>Maturity</u>	<u>Bond Date</u>
2.130%	January 1, 2031	Date of Delivery

The Shenandoah Community School District, in the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa, a school corporation organized and existing under and by virtue of the Constitution and laws of the State of Iowa (the "Issuer"), for value received, promises to pay from the source and as hereinafter provided, on the maturity date indicated above, to

**REGISTERED OWNER:  
BRANCH BANKING AND TRUST COMPANY,  
A NORTH CAROLINA BANKING CORPORATION  
FIN: \_\_\_\_\_**

or registered assigns, the principal sum of **FIVE MILLION SIX HUNDRED SEVENTY-NINE THOUSAND DOLLARS** in lawful money of the United States of America, on the maturity date shown above, only upon presentation and surrender as provided in the Bond Resolution (hereafter described) at the designated office of UMB Bank, N.A., Paying Agent of this issue, or successor with interest on the sum from the date hereof until paid at the per annum rate specified above, payable on July 1, 2020, and semiannually thereafter on the 1st day of January and July in each year.

Interest and principal shall be paid to the registered holder of the Bond as shown on the records of ownership maintained by the Registrar as of the 15th day of the month preceding such interest payment date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Bond is issued pursuant to the provisions of Iowa Code Section 423E.5 and Iowa Code Chapter 423F, as amended, for the purpose of paying costs of a School Infrastructure Project defined in and in conformity with the Act and to a Resolution of the Board of Directors of the Issuer, duly passed and approved (the "Bond Resolution" or "Resolution"). For a complete statement of the revenues and funds from which and the conditions under which this Bond is

payable, a statement of the conditions under which additional bonds of equal standing may be issued, and the general covenants and provisions pursuant to which this Bond is issued, reference is made to the above-described Resolution. Capitalized terms not defined herein shall have the meanings assigned to them in the Resolution.

Bonds maturing on or after July 1, 2025, may be called for optional redemption by the Issuer on that date, and on any principal or interest payment date thereafter and paid before maturity from any funds regardless of the source, in whole only and not in part, by giving thirty days' written notice of redemption to the registered owner of the Bond at the address shown on the books of the Registrar. Failure to give such written notice to any registered owner of the Bonds or any defect therein shall not affect the validity of any proceedings for the redemption of the Bonds. The terms of redemption will be par, plus accrued interest to date of call. Written notice will be deemed completed upon transmission to the owner of record of the Bond.

Term Bonds maturing January 1, 2031 are subject to mandatory redemption and payment at par and accrued interest, in the principal amounts set forth in the Resolution, on July 1 of the years 2020 to 2030, inclusive, and on January 1, 2031.

Ownership of this Bond may be transferred only by transfer upon the books kept for such purpose by UMB Bank, N.A., the Registrar. Such transfer on the books shall occur only upon presentation and surrender of this Bond at the office of the Registrar as designated below, together with an assignment duly executed by the owner hereof or his duly authorized attorney in the form as shall be satisfactory to the Registrar. Issuer reserves the right to substitute the Registrar and Paying Agent but shall, however, promptly give notice to registered bondholders of such change. All Bonds shall be negotiable as provided in Article 8 of the Uniform Commercial Code, subject to the provisions for registration and transfer contained in the Bond Resolution.

This Bond and the series of which it forms a part, and any Additional Bonds which may be hereafter issued and outstanding from time to time on a parity with said Bonds, as provided in the Bond Resolution of which notice is hereby given and is hereby made a part hereof, are payable from and secured solely and only by a pledge of certain School Infrastructure Tax Revenues as defined and provided in said Resolution. The Issuer covenants and agrees that it will allocate such School Infrastructure Tax Revenues to a Sinking Fund to meet the principal of and interest on this series of Bonds, and other bonds ranking on a parity therewith, as the same become due.

**This Bond is not a general obligation of the Issuer nor is the Issuer's full faith and credit and taxing power pledged to the payment hereof. The Issuer is not obligated to levy any ad valorem taxes nor to expend any moneys of the Issuer to pay this Bond, except the School Infrastructure Tax Revenues pledged under the Resolution. Under no circumstances shall the Issuer be in any manner liable by reason of the failure of said School Infrastructure Tax Revenues to be sufficient for the payment hereof.**

This Bond is a "qualified tax-exempt obligation" designated by the School District for purposes of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

And it is hereby represented and certified that all acts, conditions and things requisite, according to the laws and Constitution of the State of Iowa, to exist, to be had, to be done, or to be

performed precedent to the lawful issue of this Bond, have been existent, had, done and performed as required by law.

IN TESTIMONY WHEREOF, said Issuer by its Board of Directors has caused this Bond to be signed by the manual or facsimile signature of its President and attested by the manual or facsimile signature of its Secretary, and authenticated by the manual signature of an authorized representative of the Registrar, UMB Bank, N.A.

Date of authentication: Closing Date

This is one of the Bonds described in the Resolution, as registered by UMB Bank, N.A.

UMB BANK, N.A., Registrar

BOARD OF DIRECTORS OF THE SHENANDOAH COMMUNITY SCHOOL DISTRICT IN THE COUNTIES OF PAGE, FREMONT, MONTGOMERY, AND MILLS, STATE OF IOWA

By: \_\_\_\_\_  
Authorized signature

By:           (manual or facsimile signature)            
President of the Board

ATTEST:

By:           (manual or facsimile signature)            
Secretary of the Board

Registrar and Transfer Agent: UMB Bank, N.A.

Paying Agent: UMB Bank, N.A.

(Seal)

**ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Social Security or Tax Identification No. \_\_\_\_\_) this Bond and constitutes and appoints \_\_\_\_\_ attorney in fact to transfer this Bond on the books kept for registration of this Bond, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Person(s) executing this Assignment sign(s) here)

SIGNATURE            )  
GUARANTEED        ) \_\_\_\_\_

**IMPORTANT - READ CAREFULLY**

Signature guarantee must be provided in accordance with the prevailing standards and procedures of the Registrar and Transfer Agent which may require signatures to be guaranteed by certain eligible guarantor institutions which participate in a recognized signature guarantee program.

**INFORMATION REQUIRED FOR REGISTRATION OF TRANSFER**

Name of Transferee(s) \_\_\_\_\_  
 Address of Transferee(s) \_\_\_\_\_  
 Social Security or Tax Identification \_\_\_\_\_  
 Number of Transferee(s) \_\_\_\_\_  
 Transferee is a(n):  
 Individual\* \_\_\_\_\_ Corporation \_\_\_\_\_  
 Partnership \_\_\_\_\_ Trust \_\_\_\_\_

\*If the Bond is to be registered in the names of multiple individual owners, the names of all such owners and one address and social security number must be provided.

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though written out in full according to applicable laws or regulations:

- TEN COM - as tenants in common
- TEN ENT - as tenants by the entireties
- JT TEN - as joint tenants with rights of survivorship and not as tenants in common
- IA UNIF TRANS MIN ACT - ..... Custodian .....  
 (Cust) (Minor)  
 Under Iowa Uniform Transfers to Minors Act.....  
 (State)

ADDITIONAL ABBREVIATIONS MAY  
ALSO BE USED THOUGH NOT IN THE ABOVE LIST

{END OF FORM OF BOND}

Section 13. Equality of Lien. The timely payment of principal of and interest on the Bonds and Parity Bonds shall be secured equally and ratably by the School Infrastructure Tax Revenues without priority by reason of number or time of sale or delivery; and the School Infrastructure Tax Revenues are hereby irrevocably pledged to the timely payment of both principal and interest as the same become due.

Section 14. Application of Bond Proceeds - Project Fund. There is hereby created a Project Fund, to be held by the Issuer, into which the balance of the Bond Proceeds shall be deposited and expended therefrom for the purposes of issuance. Any amounts on hand in the Project Fund shall be available for the payment of the principal of or interest on the Bonds at any time that other School Infrastructure Tax Revenues shall be insufficient to the purpose, in which event such funds shall be repaid to the Project Fund at the earliest opportunity. Any balance on hand in the Project

Fund and not immediately required for its purposes may be invested not inconsistent with limitations provided by law, the Internal Revenue Code and this Resolution.

Section 15. Application of Revenues. The provisions of the Prior Bond Resolution are hereby ratified and confirmed. Nothing in this Resolution shall be construed to impair the rights vested in the Outstanding Bonds. The amounts herein required to be paid into the various funds named in this Section shall be inclusive of payments required in respect to the Outstanding Bonds. The provisions of the Prior Bond Resolution authorizing the Outstanding Bonds and the provisions of this Resolution are to be construed wherever possible so that the same will not be in conflict. In the event such construction is not possible, the provisions of the resolution first adopted shall prevail until such time as the bonds authorized by said resolution have been paid in full or otherwise satisfied as therein provided at which time the provisions of this Resolution shall again prevail.

As long as any of the Outstanding Bonds, the Bonds or Parity Bonds shall be outstanding and unpaid either as to principal or interest, or until all of the Bonds and Parity Bonds then outstanding shall have been discharged and satisfied in the manner provided in this Resolution, all of the receipts of the School Infrastructure Tax Revenues shall be deposited as collected with the Issuer in a special fund to be known as the Shenandoah Community School District School Infrastructure Sales and Services Tax Revenue Fund (the "Revenue Fund"), to be held by the Issuer and shall be disbursed in the following priority and only as follows:

1. Sinking Fund. The provisions in the Prior Bond Resolution, whereby there was created and is to be maintained a Sinking Fund, to be held by or on behalf of the Issuer and for the monthly payment into said fund from future School Infrastructure Tax Revenues such portion thereof as will be sufficient to meet the principal and interest of the Outstanding Bonds are hereby ratified and confirmed; provided, however, that the amounts to be set aside and paid into the Sinking Fund in equal monthly installments from the earnings shall be sufficient to pay the principal and interest due each year, not only on the Outstanding Bonds, but also the principal and interest of the Bonds herein authorized to be issued. The required amount to be deposited in the Sinking Fund in any month shall be the equal monthly amount necessary to pay in full the installment of interest coming due on the next interest payment date on the Outstanding Bonds, and the then outstanding Bonds and Parity Bonds plus the equal monthly amount necessary to pay in full the installment of principal coming due on such Outstanding Bonds, and the Bonds on the next succeeding principal payment date until the full amount of such installment is on hand. If for any reason the amount on hand in the Sinking Fund exceeds the required amount, the excess shall forthwith be withdrawn and paid into the Revenue Fund. Money in the Sinking Fund shall be used solely for the purpose of paying principal of and interest on the Outstanding Bonds, the Bonds and Parity Bonds as the same shall become due and payable. Accrued interest, if any, shall be deposited in the Sinking Fund.

2. Reserve Fund. The provisions in the Prior Bond Resolution are hereby ratified and confirmed, and all such provisions inure to the Bonds. Neither the Bonds nor the Outstanding Bonds are secured by a Reserve Fund. The Issuer may establish a Reserve Fund for Additional Bonds, if required when issued, subject to the provisions of the Internal Revenue Code of 1986, as amended, for the benefit of the purchasers of the Additional Bonds.

3. Subordinate Obligations. Money in the Revenue Fund may next be used to pay principal of and interest on (including reasonable reserves therefor) any other obligations which by their terms shall be payable from the School Infrastructure Tax Revenues, but subordinate to the Bonds and Parity Bonds.

4. Surplus Revenue. Any remaining money may be used to pay or redeem any of the Bonds or Parity Bonds or may be used for any lawful purpose.

Money in the Revenue Fund shall be allotted and paid into the various funds and accounts hereinbefore referred to in the order in which said funds are listed, on a cumulative basis on or before the 15th day of each month, or on the next succeeding business day when the 15th shall not be a business day; and if in any month the money in the Revenue Fund (including the Sinking Fund or the Reserve Fund), shall be insufficient to deposit or transfer the required amount in any of said funds or accounts, the deficiency shall be made up in the following month or months after payments into all funds and accounts enjoying a prior claim to the revenues shall have been met in full. The Issuer may establish various subaccounts within each fund established by the Prior Bond Resolution or this Resolution.

Failure to make such allocation and payment without cure within thirty days shall constitute an event of default under this Resolution.

Section 16. Investments. Moneys on hand in the Project Fund and all of the funds provided by this Resolution may be invested only in Permitted Investments or deposited in financial institutions which are members of the Federal Deposit Insurance Corporation, or its equivalent successor, and the deposits in which are insured thereby and all such deposits exceeding the maximum amount insured from time to time by FDIC or its equivalent successor in any one financial institution shall be continuously secured in compliance with the State Sinking Fund provided under Iowa Code Chapter 12C, or otherwise by a valid pledge of direct obligations of the United States Government having an equivalent market value. All investments shall mature before the date on which the moneys are required for the purposes for which the fund was created or otherwise as herein provided but in no event maturing in more than three years in the case of the Reserve Fund. The provisions of this Section shall not be construed to require the Issuer to maintain separate accounts for the funds created by this Section.

The Sinking Fund and the Reserve Fund shall be segregated in a separate account but may be invested in the same manner as other funds of the School District but designated as a trust fund on the books and records of the School District. The Sinking Fund and Reserve Fund, shall not be available for any other purposes other than those specified in this Resolution.

All income derived from such investments in the Revenue Fund shall be regarded as School Infrastructure Tax Revenues.

Earnings on investments of the Project Fund shall be deposited in and expended from the Project Fund.

Investments shall at any time necessary be liquidated and the proceeds thereof applied to the purpose for which the respective fund was created.

Section 17. Covenants of the Issuer. The Issuer hereby covenants and agrees with each and every holder of the Bonds and Parity Bonds that:

a) The Issuer will administer, enforce and collect, or cause to be administered, enforced and collected, the School Infrastructure Tax Revenues and the School Infrastructure Tax and shall take all reasonable actions that may be permitted by law to collect delinquent payments or to cause delinquent payments to be collected in accordance with law.

b) The Issuer will keep or cause to be kept books and records showing the proceeds of the School Infrastructure Tax Revenues, in which complete entries shall be made in accordance with standard principles of accounting, and any owner of any of the Bonds shall have the right at all reasonable times to inspect such books and records.

c) The Issuer shall, to the extent permitted by law, defend the validity and legality of this Resolution, the School Infrastructure Tax and the School Infrastructure Tax Revenues against all claims, suits and proceedings which would diminish or impair the School Infrastructure Tax Revenues as security for the Bonds.

d) The Issuer, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or caused to be performed, all duties with respect to the School Infrastructure Tax required by the Constitution and laws of the State of Iowa and the various ordinances, resolutions and contracts of the Issuer, including, without limitation, the proper segregation of the proceeds of the Bonds and the School Infrastructure Tax Revenues and their application from time to time to the respective funds provided therefore.

e) At any and all times the Issuer shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurance as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular, the School Infrastructure Tax Revenues and other funds and accounts hereby pledged or assigned, or intended so to be, or which the Issuer may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Resolution. The Issuer, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the School Infrastructure Tax Revenues and other funds and accounts pledged hereunder and all the rights and every owner of any of the Bonds against all claims and demands of all persons whomsoever.

f) The Issuer, its officers, agents and employees, shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Bonds according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any registered owner of any Bond or other security payable from the School Infrastructure Tax Revenues might be prejudicially and materially impaired or diminished.



g) Each Issuer officer or employee having custody of any School Infrastructure Tax Revenues, or responsible for their handling, shall be bonded at all times, which bond shall be conditioned upon the proper application of said moneys.

h) The Governing Body of the Issuer shall approve and conduct operations pursuant to a system budget of revenues and current expenses for each Fiscal Year. Such budget shall take into account revenues and current expenses during the current and last preceding Fiscal Years. Copies of such budget and any amendments thereto shall be mailed to the Original Purchaser and to the Bondholders upon request.

i) The Governing Body of the Issuer shall not take any action with respect to the Issuer's current Revenue Purpose Statement, as such term is used in Iowa Code Section 423F.3, authorizing the uses of the School Infrastructure Tax Revenues, as approved by the voters of the Issuer on September 8, 2009, which would impair the ability or authority of the Issuer to apply School Infrastructure Tax Revenues to the payments of principal and interest on the Bonds and Parity Bonds.

Notwithstanding anything in this Section to the contrary, none of the foregoing covenants of the Issuer with respect to the School Infrastructure Tax Revenues shall obligate the Issuer to undertake or perform any duty, task or obligation to be performed by the State of Iowa or a county or its Board of Supervisors under the terms of the Act or other provision of the Code of Iowa, as from time to time amended.

Section 18. Remedies of Bondholders. Except as herein expressly limited the holder or holders of the Bonds and Parity Bonds shall have and possess all the rights of action and remedies afforded by the common law, the Constitution and statutes of the State of Iowa, and of the United States of America, for the enforcement of payment of their Bonds or Parity Bonds and interest thereon, and of the pledge of the revenues made hereunder, and of all covenants of the Issuer hereunder.

Section 19. Prior Lien and Parity Bonds; Subordinate Obligations. So long as the Outstanding Bonds remain a lien on the School Infrastructure Tax Revenues, Section 19 of the Prior Bond Resolution shall apply. Thereafter, this Section shall apply.

The Issuer will issue no other Additional Bonds or obligations of any kind or nature payable from or enjoying a lien or claim on the School Infrastructure Tax Revenues having priority over the Bonds or Parity Bonds.

Additional Bonds may be issued on a parity and equality of rank with the Bonds and any Parity Bonds with respect to the lien and claim of such Additional Bonds to the School Infrastructure Tax Revenues and the money on deposit in the funds adopted by this Resolution, for the following purposes and under the following conditions, but not otherwise:

a) For the purpose of refunding any of the Bonds or Parity Bonds outstanding so long as the refunding is an Economic Refunding, without complying with subsection (b) below.

b) For the purpose of refunding any Bonds or Parity Bonds outstanding, or for other lawful purposes, provided that, before any such Additional Bonds ranking on a parity are issued, there will have been procured and filed with the Secretary, a statement of an Independent Auditor reciting the opinion based upon necessary investigations that the School Infrastructure Tax Revenues for the preceding Fiscal Year (with adjustments as hereinafter provided) were equal to at least 1.20 times the maximum amount that will be required in any Fiscal Year for the payment of both principal of and interest on all Bonds or Parity Bonds then outstanding which are payable from the School Infrastructure Tax Revenues and the Additional Bonds then proposed to be issued.

For the purpose of determining the School Infrastructure Tax Revenues for the preceding Fiscal Year, the amount of the revenues for such year may be adjusted by the Independent Auditor to reflect: (1) any revision of the rate of the School Infrastructure Tax as if such revision had been in effect during all of such preceding Fiscal Year; (2) the current level at which the State funds the Statewide Average Revenue Per Student then in effect for the year in which the Additional Bonds are issued. For the purpose of determining the School Infrastructure Tax Revenues for the preceding Fiscal Year, the amount of revenues for such year shall be adjusted by the Independent Auditor to reflect the most recent certified enrollment count of students for the School District.

c) the Additional Bonds must be payable as to principal and as to interest on the same month and day as the Bonds herein authorized.

-- d) for the purposes of this Section, principal and interest falling due on the first day of a Fiscal Year shall be deemed a requirement of the immediately preceding Fiscal Year.

e) the Reserve Fund for the Additional Bonds, if required, must be fully funded as of the date of issue of the Additional Bonds.

The Issuer may not issue any bonds, notes, or other obligations that are subordinate to the Bonds ("Subordinate Obligations") unless it has obtained a statement of an Independent Auditor reciting the opinion based upon necessary investigations that the School Infrastructure Tax Revenues for the preceding Fiscal Year (with adjustments as provided in paragraph (b)(i) of this Section) were at least equal to the maximum amount that will be required in any Fiscal Year for both principal of and interest on all Bonds, Parity Bonds, or Subordinate Obligations then outstanding which are payable from School Infrastructure Tax Revenues and the bonds, notes, or other obligations then proposed to be issued.

Section 20. Disposition of Bond Proceeds; Arbitrage Not Permitted. The Issuer reasonably expects and covenants that no use will be made of the proceeds from the issuance and sale of the Bonds issued hereunder which will cause any of the Bonds to be classified as arbitrage bonds within the meaning of Section 148(a) and (b) of the Internal Revenue Code of the United States, and that throughout the term of said Bonds it will comply with the requirements of said statute and regulations issued thereunder.

To the best knowledge and belief of the Issuer, there are no facts or circumstances that would materially change the foregoing statements or the conclusion that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be arbitrage bonds.

Without limiting the generality of the foregoing, the Issuer hereby agrees to comply with the provisions of the Tax Exemption Certificate and the provisions of the Tax Exemption Certificate are hereby incorporated by reference as part of this Resolution. The Treasurer is hereby directed to make and insert all calculations and determinations necessary to complete the Tax Exemption Certificate in all respects and to execute and deliver the Tax Exemption Certificate at issuance of the Bonds to certify as to the reasonable expectations and covenants of the Issuer at that date.

The Issuer covenants that it will treat as Yield Restricted any proceeds of the Bonds remaining unexpended after three years from the issuance and any other funds required by the Tax Exemption Certificate to be so treated. If any investments are held with respect to the Bonds and Parity Bonds, the Issuer shall treat the same for the purpose of restricted yield as held in proportion to the original principal amounts of each issue.

The Issuer covenants that it will exceed any investment yield restriction provided in this Resolution only in the event that it shall first obtain an opinion of recognized bond counsel that the proposed investment action will not cause the bonds to be classified as arbitrage bonds under Section 148 of the Internal Revenue Code or regulations issued thereunder.

The Issuer covenants that it will proceed with due diligence to spend the proceeds of the Bonds for the purpose set forth in this Resolution. The Issuer further covenants that it will make no change in the use of the proceeds available for the construction of facilities or change in the use of any portion of the facilities constructed therefrom by persons other than the Issuer or the general public unless it has obtained an opinion of bond counsel or a revenue ruling that the proposed project or use will not be of such character as to cause interest on any of the Bonds not to be exempt from federal income taxes in the hands of holders other than substantial users of the project, under the provisions of Section 142 of the Internal Revenue Code of the United States, related statutes and regulations.

Section 21. Additional Covenants, Representations and Warranties of the Issuer. The Issuer certifies and covenants with the Original Purchaser and the purchasers and holders of the Bonds from time to time outstanding that the Issuer through its officers, (a) will make such further specific covenants, representations and assurances as may be necessary or advisable; (b) comply with all representations, covenants and assurances contained in the Tax Exemption Certificate, which Tax Exemption Certificate shall constitute a part of the contract between the Issuer and the owners of the Bonds; (c) consult with bond counsel (as defined in the Tax Exemption Certificate); (d) pay to the United States, as necessary, such sums of money representing required rebates of excess arbitrage profits relating to the Bonds; (e) file such forms, statements and supporting documents as may be required and in a timely manner; and (f) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the Issuer in such compliance.

If a registered owner of Bonds receives notice, in any form, from the Internal Revenue Service (a) that such owner may not exclude interest on the Bonds from federal gross income or (b) that any of the Bonds are not "Qualified Tax-Exempt Obligations" because the Issuer breached a covenant contained in Section 20, 21 or 22 of this Resolution (including in the Tax Exemption Certificate incorporated herein by reference), then the Issuer shall pay to the registered owners of the Bonds so affected, within thirty (30) days after a registered owner of Bonds notifies the Issuer of such determination, the amount which, with respect to interest on the Bonds previously paid,

will restore to the owners of the Bonds interest thereon at the Taxable Rate (as herein defined). Additionally, the Issuer agrees that upon the occurrence of such an event, it shall thereafter pay interest on the Bonds at the rate of interest equal to the Taxable Rate notwithstanding any other provision of this Resolution or the Bonds that may be to the contrary. As used herein, the term "Taxable Rate" shall mean 2.75% per annum.

Section 22. Qualified Tax-Exempt Obligations. For the sole purpose of qualifying the Bonds as "Qualified Tax-Exempt Obligations" pursuant to the Internal Revenue Code of the United States, the Issuer designates the Bonds as qualified tax-exempt obligations and represents that the reasonably anticipated amount of tax-exempt government and Code Section 501(c)(3) obligations which will be issued during the current calendar year will not exceed Ten (10) Million Dollars.

Section 23. Discharge and Satisfaction of Bonds. The covenants, liens and pledges entered into, created or imposed pursuant to this Resolution may be fully discharged and satisfied with respect to the Bonds and Parity Bonds, or any of them, in any one or more of the following ways:

a) By paying the Bonds or Parity Bonds when the same shall become due and payable; and

b) By depositing in trust with the Treasurer, or with a corporate trustee designated by the Governing Body for the payment of said obligations and irrevocably appropriated exclusively to that purpose an amount in cash or direct obligations of the United States the maturities and income of which shall be sufficient to retire at maturity, or by redemption prior to maturity on a designated date upon which said obligations may be redeemed, all of such obligations outstanding at the time, together with the interest thereon to maturity or to the designated redemption date, premiums thereon, if any that may be payable on the redemption of the same; provided that proper notice of redemption of all such obligations to be redeemed shall have been previously published or provisions shall have been made for such publication.

Upon such payment or deposit of money or securities, or both, in the amount and manner provided by this Section, all liability of the Issuer with respect to the Bonds or Parity Bonds shall cease, determine and be completely discharged, and the holders thereof shall be entitled only to payment out of the money or securities so deposited.

Section 24. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Issuer and the holder or holders of the Bonds and Parity Bonds, and after the issuance of any of the Bonds no change, variation or alteration of any kind in the provisions of this Resolution shall be made in any manner, except as provided in the next succeeding Section, until such time as all of the Bonds and Parity Bonds, and interest due thereon, shall have been satisfied and discharged as provided in this Resolution.

Section 25. Amendment of Resolution Without Consent. The Issuer may, without the consent of or notice to any of the holders of the Bonds and Parity Bonds, amend or supplement this Resolution for any one or more of the following purposes:

a) to cure any ambiguity, defect, omission or inconsistent provision in this Resolution or in the Bonds or Parity Bonds; or to comply with any applicable provision of

law or regulation of federal or state agencies; provided, however, that such action shall not materially adversely affect the interests of the holders of the Bonds or Parity Bonds;

b) to change the terms or provisions of this Resolution to the extent necessary to prevent the interest on the Bonds or Parity Bonds from being includable within the gross income of the holders thereof for federal income tax purposes;

c) to grant to or confer upon the holders of the Bonds or Parity Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the bondholders;

d) to add to the covenants and agreements of the Issuer contained in this Resolution other covenants and agreements of, or conditions or restrictions upon, the Issuer or to surrender or eliminate any right or power reserved to or conferred upon the Issuer in this Resolution; or

c) to subject to the lien and pledge of this Resolution additional pledged revenues as may be permitted by law.

Section 26. Amendment of Resolution Requiring Consent. This Resolution may be amended from time to time if such amendment shall have been consented to by the holders of the Bonds and the holders of not less than two-thirds in principal amount of the Parity Bonds at any time outstanding (not including in any case any bonds which may then be held or owned by or for the account of the Issuer, but including such refunding bonds as may have been issued for the purpose of refunding any of such bonds if such refunding bonds shall not then be owned by the Issuer); but this Resolution may not be so amended in such manner as to:

a) Make any change in the maturity or interest rate of the Bonds, or modify the terms of payment of principal of or interest on the Bonds or any of them or impose any conditions with respect to such payment;

b) Materially affect the rights of the holders of less than all of the Bonds and Parity Bonds then outstanding; and

c) Reduce the percentage of the principal amount of Bonds, the consent of the holders of which is required to affect a further amendment.

Whenever the Issuer shall propose to amend this Resolution under the provisions of this Section, it shall cause notice of the proposed amendment to be filed with the Original Purchaser and to be mailed by certified mail to each registered owner of any Bond as shown by the records of the Registrar. Such notice shall set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory Resolution is on file in the office of the Secretary.

Whenever at any time within one year from the date of the mailing of said notice there shall be filed with the Secretary an instrument or instruments executed by the holders of the Bonds and at least two-thirds in aggregate principal amount of the Parity Bonds then outstanding as in this Section defined, which instrument or instruments shall refer to the proposed amendatory Resolution described in said notice and shall specifically consent to and approve the adoption

thereof, thereupon, but not otherwise, the governing body of the Issuer may adopt such amendatory Resolution and such Resolution shall become effective and binding upon the holders of all of the Bonds and Parity Bonds.

Any consent given by the holder of a bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the instrument evidencing such consent and shall be conclusive and binding upon all future holders of the same bond during such period. Such consent may be revoked at any time after six months from the date of such instrument by the holder who gave such consent or by a successor in title by filing notice of such revocation with the Secretary.

The fact and date of the execution of any instrument under the provisions of this Section may be proved by the certificate of any officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or may be proved by an affidavit of a witness to such execution sworn to before such officer.

The amount and numbers of the bonds held by any person executing such instrument and the date of his holding the same may be proved by an affidavit by such person or by a certificate executed by an officer of a bank or trust company showing that on the date therein mentioned such person had on deposit with such bank or trust company the bonds described in such certificate.

Section 27. Severability. If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions.

Section 28. Successor Clause. The Issuer will maintain its corporate existence, and in the event of reorganization of any kind; the resolutions and the obligations of the Issuer are binding upon any successor or assigns.

Section 29. Repeal of Conflicting Resolutions and Effective Date. All other resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed, and this Resolution shall be in effect from and after its adoption.

PASSED AND APPROVED this 11<sup>th</sup> day of November, 2019.

\_\_\_\_\_  
President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary of the Board of Directors





## **PAYING AGENT; BOND REGISTRAR AND TRANSFER AGENT AGREEMENT**

THIS AGREEMENT is made and entered into on the date of delivery by and between the Shenandoah Community School District hereinafter called "ISSUER", and UMB Bank, N.A., a national banking association with its principal payment office in Kansas City, Missouri, in its capacity as paying agent and registrar, hereinafter called the "AGENT".

WHEREAS, the ISSUER has issued, or is currently in the process of issuing, pursuant to an ordinance, resolution, order, final terms certificate, notice of sale or other authorizing instrument of the governing body of the ISSUER, hereinafter collectively called the "Bond Document" certain bonds, certificates, notes and/or other debt instruments, more particularly described as \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019, dated the date of delivery hereinafter called the "Bonds"; and

WHEREAS, pursuant to the Bond Document, the ISSUER has designated and appointed the AGENT as agent to perform registrar, transfer and paying agent services, to wit: establishing and maintaining a record of the owners of the Bonds, effecting the transfer of ownership of the Bonds in an orderly and efficient manner, making payments of principal and interest when due pursuant to the terms and conditions of the Bonds, and for other related purposes; and

WHEREAS, the AGENT has represented that it possesses the necessary qualifications and maintains the necessary facilities to properly perform the required services as such registrar, transfer and paying agent and is willing to serve in such capacities for the ISSUER;

NOW THEREFORE, in consideration of mutual promises and covenants herein contained the parties agree as follows:

1. The ISSUER has designated and appointed the AGENT as registrar, transfer and paying agent of the Bonds pursuant to the Bond Document, and the AGENT has accepted such appointment and agrees to provide the services set forth therein and herein.

2. The ISSUER agrees to deliver or cause to be delivered to the AGENT a transcript of the proceedings related to the Bonds to contain the following documents:

(a) A copy of the Bond Document, and the consent or approval of any other governmental or regulatory authority, required by law to approve or authorize the issuance of the Bonds;

(b) A written opinion by an attorney or by a firm of attorneys with a nationally recognized standing in the field of municipal bond financing, and any supporting or supplemental opinions, to the effect that the Bonds and the Bond Document have been duly authorized and issued by, are legally binding upon and are enforceable against the ISSUER;

(c) A closing certificate of the ISSUER, a closing certificate and/or receipt of the purchaser(s) of the Bonds, and such other documents related to the issuance of the Bonds as the Agent reasonably deems necessary or appropriate; and

(d) Unless Paragraph 20 hereof is applicable and if requested in writing by AGENT, in addition to the transcript of proceedings a reasonable supply of blank Bond certificates bearing the manual or facsimile signatures of officials of the ISSUER authorized to sign certificates and, if required by the Bond Document, impressed with the ISSUER's seal or facsimile thereof, to enable the AGENT to provide Bond Certificates to the holders of the Bonds upon original issuance or the transfer thereof.

The foregoing documents may be subject to the review and approval of legal counsel for the AGENT. Furthermore, the ISSUER shall provide to the AGENT prompt written notification of any future amendment or change in respect of any of the foregoing, together with such documentation as the AGENT reasonably deems necessary or appropriate.

3. Unless Paragraph 20 hereof is applicable, Bond certificates provided by the ISSUER shall be printed in a manner to minimize the possibility of counterfeiting. This requirement shall be deemed satisfied by use of a certificate format meeting the standard developed by the American National Standards Committee or in such other format as the AGENT may accept by its authentication thereof. The AGENT shall have no responsibility for the form or contents of any such certificates. The ISSUER shall, while any of the Bonds are outstanding, provide a reasonable supply of additional blank certificates at any time upon request of the AGENT. All such certificates shall satisfy the requirements set forth in Paragraphs 2(d) and 3.

4. The AGENT shall initially register and authenticate, pursuant to instructions from the ISSUER and/or the initial purchaser(s) of the Bonds, one or more Bonds and shall enter into a Bond registry record the certificate number of the Bond and the name and address of the owner. The AGENT shall maintain such registry of owners of the Bonds until all the Bonds have been fully paid and surrendered. The initial owner of each Bond as reflected in the registry of owners shall not be changed except upon transfers of ownership and in accordance with procedures set forth in the Bond Document or this Agreement.

5. Transfers of ownership of the Bonds shall be made by the AGENT as set forth in the Bond Document. Absent specific guidelines in the Bond Document, transfers of ownership of the Bonds shall be made by the AGENT only upon delivery to the AGENT of a properly endorsed Bond or of a Bond accompanied by a properly endorsed transfer instrument, accompanied by such documents as the AGENT may deem necessary to evidence the authority of the person making the transfer, and satisfactory evidence of compliance with all applicable laws relating to the collection of taxes. The AGENT reserves the right to refuse to transfer any Bond until it is satisfied that each necessary endorsement is genuine and effective, and for that purpose it may require guarantees of signatures in accordance with applicable rules of the Securities and Exchange Commission and the standards and procedures of the AGENT, together with such other assurances as the AGENT shall deem necessary or appropriate. The AGENT shall incur no liability for delays in registering transfers as a result of inquiries into adverse claims or for the refusal in good faith to make transfers which it, in its judgment, deems improper or unauthorized. Upon presentation and surrender of any duly registered Bond and satisfaction of the transferability requirements, the AGENT shall (a) cancel the surrendered Bond; (b) register a new Bond(s) as directed in the same aggregate principal amount and maturity; (c) authenticate the new Bond(s); and (d) enter the transferee's name and address, together with the certificate number of the new Bond(s), in its registry of owners.

6. The AGENT may deliver Bonds by first class, certified, or registered mail, or by courier.

7. Ownership of, payment of the principal amount of, redemption premium, if any, and interest due on the Bonds, delivery of notices, and for all other purposes shall be subject to the provisions of the Bond Document. The AGENT shall have no responsibility to determine the beneficial owners of any Bonds and shall owe no duties to any such beneficial owners. Upon written request and reasonable notice from the ISSUER, the AGENT will mail, at the ISSUER's expense, notices or other communications from the ISSUER to the holders of the Bonds as recorded in the registry maintained by the AGENT.

8. Unless the Bond Document provides otherwise, the ISSUER shall, without notice from or demand of the AGENT, provide to the AGENT funds that are immediately available at least one business day prior to the relevant interest and/or principal payment date, sufficient to pay on each interest payment date and each principal payment date, all interest and principal then payable under the terms and provisions of the Bond Document and the Bonds. The AGENT shall have no responsibility to make any such payments to the extent ISSUER has not provided sufficient immediately available funds to AGENT on the relevant payment date. In the event that an interest and/or principal payment date shall be a date that is not a business day, payment may be made on the next succeeding business day and no interest shall accrue. The term "business day" shall include all days except Saturdays, Sundays and legal holidays recognized by the Federal Reserve Bank of Kansas City, Missouri.

9. Unless otherwise provided in the Bond Document and subject to the provisions of Paragraph 12 hereof, to the extent that the ISSUER has made sufficient funds available to it, the AGENT will pay to the record owners of the Bonds as of any record date (as specified in the Bond certificate or Bond Document) the interest due thereon as of the related interest payment date or any redemption date and, will pay upon presentation and surrender of such Bond at maturity or earlier date of redemption to the owner of any Bond, the principal or redemption amount of such Bond.

10. The AGENT may make a charge against any Bond owner sufficient for the reimbursement of any governmental tax or other charge legally required to be withheld for any reason, including, but not limited to, failure of such owner to provide a correct taxpayer identification number to the AGENT. Such charge may be deducted from an interest or principal payment due to such owner.

11. Unless payment of interest, principal, and redemption premium, if any, is made by electronic transfer all payments will be made by check or draft and mailed to the last address of the owner as reflected on the registry of owners, or to such other address as directed in writing by the owner. In the event that the Bond owner elects in writing that payment of interest, principal, and redemption premium, if any, be paid by electronic transfer, the AGENT shall make payment by such means pursuant to written instructions from the Bond owner and at the expense of the Bond owner.

12. Subject to the provisions of the Bond Document, the AGENT may pay at maturity or redemption or issue new certificates to replace certificates represented to the AGENT to have

been lost, destroyed, stolen or otherwise wrongfully taken, but may first may require the Bond owner to pay a replacement fee, to furnish an affidavit of loss, and/or furnish either an indemnity bond or other indemnification satisfactory to the AGENT indemnifying the ISSUER and the AGENT.

13. The AGENT shall comply with the provisions, if any, of the Bond Document and the rules of the Securities and Exchange Commission pertaining to the cancellation and retention of Bond certificates and the periodic certification to the ISSUER of the cancellation of such Bond certificates. In the event that the ISSUER requests in writing that the AGENT forward to the ISSUER the cancelled Bond certificates, the ISSUER agrees to comply with the foregoing described rules. The AGENT shall have no duty to retain any documents or records pertaining to this Agreement, the Bond Document or the Bonds any longer than eleven years after final maturity of the Bonds, unless otherwise required by the rules of the Securities and Exchange Commission or other applicable law.

14. The records maintained by AGENT in connection with the Bonds shall remain confidential records entitled to protection and confidentiality pursuant to Section 22.7(17), Code of Iowa. AGENT agrees that its use of the records will be limited to the purposes of this Agreement and that AGENT will make no private use or permit any private access thereto without the prior written consent of the ISSUER, which shall not be unreasonably withheld.

15. The AGENT is authorized to act on the order, directions or instructions of such officials as the governing body of ISSUER as the ISSUER by resolution or other proper action shall designate. The AGENT shall be protected in acting upon any paper or document believed by it to be genuine and to have been signed by the proper official(s), and the ISSUER shall promptly notify AGENT in writing of any change in the identity or authority of officials authorized to sign Bond certificates, written instructions or requests. If not so provided in the Bond Document, if any official whose manual or facsimile signature appears on blank Bond certificates shall die, resign or be removed from office or authority before the authentication of such certificates by the Agent, the AGENT may nevertheless issue such certificates until specifically directed to the contrary in writing by the ISSUER.

16. The AGENT shall provide notice(s) to the owners of the Bonds and such depositories, banks, brokers, rating agencies, information services, repositories, or publications as required by the terms of the Bond Document and to any other entities that request such notice(s) and, if so directed in such other manner and to such other parties as the ISSUER shall so direct in writing and at the expense of the ISSUER.

17. The ISSUER shall compensate the AGENT for the AGENT's ordinary services as paying agent and registrar, and shall reimburse the AGENT for all ordinary out-of-pocket expenses, charges, advances, counsel fees and other costs incurred in connection with the Bonds, the Bond Document and this Agreement as set forth in the Exhibit A or as otherwise agreed to by the ISSUER and AGENT in writing. In addition, should it become necessary for the AGENT to perform extraordinary services, the AGENT shall be entitled to extra compensation therefor and reimbursement for any out-of-pocket extraordinary costs and expenses, including, but not limited to, attorneys' fees. AGENT shall use commercially reasonable efforts to provide notice to the Issuer prior to performing extraordinary services or incurring such costs and expenses; provided,

however, that AGENT's right to compensation hereunder shall not be affected by any failure to provide such prior notice.

18. The AGENT may resign, or be removed by the ISSUER upon a date which, unless otherwise waived by the other party, is (a) at least thirty days after the receipt of written notice to the other and (b) in the case such notice is given by the AGENT, at least fifteen days prior to the next succeeding principal or interest payment date. Upon the effective date of resignation or removal, all obligations of the AGENT hereunder shall cease and terminate, but AGENT shall not be discharged from any liability for actions taken as AGENT under this Agreement prior to such resignation or removal. In the event of resignation or removal, the AGENT shall deliver the registry of owners and all related books and records in accordance with the written instructions of the ISSUER or any successor agent designated in writing by the ISSUER within a reasonable period following the effective date of its removal or resignation.

19. Whenever in the performance of its duties as Agent hereunder, the Bond Document or under the Bonds the AGENT shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, under the Bond Document or under the Bonds, the AGENT may consult with nationally recognized legal counsel in accordance with its internal policies and procedures, including, but not limited to, legal counsel for the ISSUER, with respect to any matter in connection with this Agreement and it shall not be liable for any action taken or omitted by it in good faith in reliance upon the advice or opinion of such counsel.

20. In the event that the Bond Document provides that the initial registered owner of all of the Bond certificates is or may be the Depository Trust Company, or any other securities depository or registered clearing agency qualified under the Securities and Exchange Act of 1934, as amended (a "Securities Depository"), none of the beneficial owners will receive certificates representing their respective interest in the Bonds. Except to the extent provided otherwise in the Bond Document, the following provisions shall apply:

(a) The registry of owners maintained by the AGENT will reflect as owner of the Bonds only the Securities Depository or its nominee, until and unless the ISSUER authorizes the delivery of Bond certificates to the beneficial owners as described in subsection (d) below.

(b) It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its participants and receive and transmit payments of principal and interest on the Bonds to the participants, unless and until the ISSUER authorizes the delivery of Bonds to the beneficial owners as described in subsection (d) below.

(c) The ISSUER may at any time, in accordance with the Bond Document, select and appoint a successor Securities Depository and shall notify the Agent of such selection and appointment in writing.

(d) If the ISSUER determines that the holding of the Bonds by the Securities Depository is no longer in the best interests of the beneficial owners of the Bonds, then the AGENT, at the written instruction and expense of the ISSUER, shall notify the beneficial

owners of the Bonds by first class mail of such determination and of the availability of certificates to owners requesting the same. The AGENT shall register in the names of and authenticate and deliver certificates representing their respective interests in the Bonds to the beneficial owners or their nominees, in principal amounts and maturities representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption. In such event, all references to the Securities Depository herein shall relate to the period of time when at least one Bond is registered in the name of the Securities Depository or its nominee. For the purposes of this paragraph, the AGENT may conclusively rely on information provided by the Securities Depository and its participants as to principal amounts held by and the names and mailing addresses of the beneficial owners of the Bonds, and shall not be responsible for any investigation to determine the beneficial owners. The cost of printing certificates for the Bonds and expenses of the AGENT shall be paid by the ISSUER.

21. The AGENT shall not be liable for any error in judgment in fulfilling its obligations under this Agreement or the Bond Document that is made in good faith by an officer or employee of the AGENT unless it shall be determined by a court of competent jurisdiction that the AGENT was negligent in ascertaining the pertinent facts or acted intentionally in bad faith. The AGENT shall not be under any obligation to prosecute or defend any action or suit in connection with its duties under the Bond Document or this Agreement or in respect of the Bonds, which, in its opinion, may involve it in expense or liability, unless satisfactory security and indemnity is furnished to the Agent (except as may result from the AGENT's own negligence or willful misconduct). The AGENT shall only be responsible for performing such duties as are set forth herein, required by the Bond Document, or otherwise agreed to in writing by the AGENT.

22. It is mutually understood and agreed that, unless otherwise provided in the Bonds or Bond Document, this Agreement shall be governed by the laws of the State of Iowa, both as to interpretation and performance.

23. The Bond Document and the terms thereof are hereby incorporated by reference and the provisions of this Agreement are to be construed to be consistent with the Bond Document. In the event of inconsistent language between the Bond Document and this Agreement, the terms of the Bond Document shall prevail.

24. AGENT shall comply at all times with such rules, regulations, and requirements as may govern the registration, transfer and payment of registered bonds including without limitation Chapters 76, 423E, 423F and Section 554.8101 et seq. Code of Iowa and standards issued from time to time by the Municipal Securities Rulemaking Board of the United States and any other securities industry standard and the requirements of the Internal Revenue Code of 1986.

25. In the event any payment check representing payment of interest or principal on the Bonds is returned to the AGENT or is not presented for payment, or if any Bond is not presented for payment of principal or premium, if any, at the maturity or redemption date, if funds sufficient to pay such interest on Bonds shall have been made available to the AGENT for the benefit of the owner thereof, all liability of the ISSUER to the owner thereof for such interest or payment of such Bonds shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the AGENT to hold such funds, without liability for interest thereon, for the benefit of the

owner of such Bonds who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Agreement or on, or with respect to, such interest or Bonds. The AGENT'S obligation to hold such funds shall continue for a period equal to two years and six months following the date on which such interest or principal became due, whether at maturity, or at the date fixed for redemption thereof, or otherwise, at which time the AGENT, shall surrender any remaining funds so held to the ISSUER, whereupon any claim under this Agreement by the Bond owners of such interest or Bonds of whatever nature shall be made upon the ISSUER.

26. It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any applicable law, regulation or rule, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

27. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns. If AGENT consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including this Agreement) to another corporation which is a transfer agent properly registered with and in compliance with the rules of the Securities and Exchange Commission, AGENT shall provide written notice to ISSUER of such event at least sixty (60) days prior to its becoming effective, and the successor corporation without any further act shall be the successor AGENT. Except as provided in this section this Agreement may not be assigned by any party without the written consent of the other party.

28. All notices, demands, and requests required or permitted to be given to the ISSUER or AGENT under the provisions hereof must be in writing and shall be deemed to have been sufficiently given, upon receipt if (i) personally delivered, (ii) sent by telecopy and confirmed by phone or (iii) mailed by registered or certified mail, with return receipt requested, delivered as follows:

If to AGENT: UMB Bank, N.A.  
Attn: Corporate Trust & Escrow Services  
7155 Lake Drive, Suite 120  
West Des Moines, Iowa 50266

If to ISSUER: Shenandoah Community School District  
Attn: Secretary of the Board of Directors  
304 West Nishna Road  
Shenandoah, Iowa 51601

29. The parties hereto agree that the transactions described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

30. In order to comply with provisions of the USA PATRIOT Act of 2001, as amended from time to time, and the Bank Secrecy Act, as amended from time to time, the AGENT may

request certain information and/or documentation to verify confirm and record identification of persons or entities who are parties to this Agreement.

31. If the Bonds are eligible for receipt of any U.S. Treasury Interest Subsidy and if so directed by the Bond Document or, as agreed to in writing between the ISSUER and the AGENT, the AGENT shall comply with the provisions, if any, relating to it as described in the Bond Document or as otherwise agreed upon in writing between the ISSUER and the AGENT. The AGENT shall not be responsible for completion of or the actual filing of Form 8038-CP (or any successor form) with the IRS or any payment from the United States Treasury in accordance with §§ 54AA and 6431 of the Code.

**IN WITNESS WHEREOF**, the parties hereto have, by their duly authorized signatories, set their respective hands and seals as of the date of delivery.

SHENANDOAH COMMUNITY SCHOOL  
DISTRICT, STATE OF IOWA, ISSUER

By: \_\_\_\_\_  
President of the Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary of the Board of Directors



UMB BANK, N.A., as PAYING  
AGENT/REGISTRAR

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

01637198-1\18883-022

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TAX EXEMPTION CERTIFICATE

of

SHENANDOAH COMMUNITY SCHOOL DISTRICT,  
COUNTIES OF PAGE, FREMONT, MONTGOMERY, AND MILLS,  
STATE OF IOWA, ISSUER

\$5,679,000 School Infrastructure Sales, Services and  
Use Tax Revenue Bonds, Series 2019

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This instrument was prepared by:

Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309  
(515) 243-7611

## TABLE OF CONTENTS

This Table of Contents is not a part of this Tax Exemption Certificate and is provided only for convenience of reference.

<b>INTRODUCTION</b> .....	<b>1</b>
<b>ARTICLE I DEFINITIONS</b> .....	<b>1</b>
<b>ARTICLE II SPECIFIC CERTIFICATIONS, REPRESENTATIONS AND AGREEMENTS</b> .....	<b>4</b>
Section 2.1 Authority to Certify and Expectations .....	4
Section 2.2 Receipts and Expenditures of Sale Proceeds .....	6
Section 2.3 Purpose of Bonds .....	7
Section 2.4 Facts Supporting Tax-Exemption Classification .....	7
Section 2.5 Facts Supporting Temporary Periods for Proceeds .....	7
Section 2.6 Resolution Funds at Restricted or Unrestricted Yield .....	8
Section 2.7 Pertaining to Yields.....	8
<b>ARTICLE III REBATE</b> .....	<b>9</b>
Section 3.1 Records .....	9
Section 3.2 Rebate Fund .....	9
Section 3.3 Exceptions to Rebate.....	9
Section 3.4 Calculation of Rebate Amount.....	10
Section 3.5 Rebate Requirements and the Bond Fund.....	10
Section 3.6 Investment of the Rebate Fund .....	10
Section 3.7 Payment to the United States .....	11
Section 3.8 Records .....	11
Section 3.9 Additional Payments.....	12
<b>ARTICLE IV INVESTMENT RESTRICTIONS</b> .....	<b>12</b>
Section 4.1 Avoidance of Prohibited Payments.....	12
Section 4.2 Market Price Requirement .....	12
Section 4.3 Investment in Certificates of Deposit .....	12
Section 4.4 Investment Pursuant to Investment Contracts and Agreements .....	13
Section 4.5 Records .....	15
Section 4.6 Investments to be Legal .....	15
<b>ARTICLE V GENERAL COVENANTS</b> .....	<b>15</b>
<b>ARTICLE VI AMENDMENTS AND ADDITIONAL AGREEMENTS</b> .....	<b>15</b>
Section 6.1 Opinion of Bond Counsel; Amendments.....	15
Section 6.2 Additional Covenants, Agreements .....	16
Section 6.3 Internal Revenue Service Audits .....	16
Section 6.4 Amendments .....	16
<b>ARTICLE VII QUALIFIED TAX EXEMPT OBLIGATIONS</b> .....	<b>16</b>
<b>EXHIBIT A – CERTIFICATE OF THE PURCHASER</b>	

## TAX EXEMPTION CERTIFICATE

### SHENANDOAH COMMUNITY SCHOOL DISTRICT, STATE OF IOWA

THIS TAX EXEMPTION CERTIFICATE made and entered into on November 25, 2019, by the Shenandoah Community School District, Counties of Page, Fremont, Montgomery, and Mills, State of Iowa (the "Issuer").

#### INTRODUCTION

This Certificate is executed and delivered in connection with the issuance by the Issuer of its \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019 (the "Bonds"). The Bonds are issued pursuant to the provisions of the Resolution of the Issuer authorizing the issuance of the Bonds. Such Resolution provides that the covenants contained in this Certificate constitute a part of the Issuer's contract with the owners of the Bonds.

The Issuer recognizes that under the Code (as defined below) the tax-exempt status of the interest received by the owners of the Bonds is dependent upon, among other things, the facts, circumstances, and reasonable expectations of the Issuer as to future facts not in existence at this time, as well as the observance of certain covenants in the future. The Issuer covenants that it will take such action with respect to the Bonds as may be required by the Code, and pertinent legal regulations issued thereunder in order to establish and maintain the tax-exempt status of the Bonds, including the observance of all specific covenants contained in the Resolution and this Certificate.

#### ARTICLE I

##### DEFINITIONS

The following terms as used in this Certificate shall have the meanings set forth below. The terms defined in the Resolution shall retain the meanings set forth therein when used in this Certificate. Other terms used in this Certificate shall have the meanings set forth in the Code or in the Regulations.

- "Annual Debt Service" means the principal of and interest on the Bonds scheduled to be paid during a given Bond Year.
- "Bonds" means the \$5,679,000 aggregate principal amount of School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019, of the Issuer issued in registered form pursuant to the Resolution.
- "Bond Counsel" means Ahlers & Cooney, P.C., Des Moines, Iowa, or an attorney at law or a firm of attorneys of nationally recognized standing in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any State of the United States of America.
- "Bond Fund" means the Sinking Fund described in the Resolution.

- "Bond Purchase Agreement" means the binding contract in writing for the sale of the Bonds.
- "Bond Year" as defined in Regulation 1.148-1(b), means a one-year period beginning on the day after expiration of the preceding Bond Year. The first Bond Year shall be the one-year or shorter period beginning on the Closing Date and ending on a principal or interest payment date, unless Issuer selects another date.
- "Bond Yield" means that discount rate which produces an amount equal to the Issue Price of the Bonds when used in computing the present value of all payments of principal and interest to be paid on the Bonds, using semiannual compounding on a 360-day year as computed under Regulation 1.148-4.
- "Certificate" means this Tax Exemption Certificate.
- "Closing" means the delivery of the Bonds in exchange for the agreed upon purchase price.
- "Closing Date" means the date of Closing.
- "Code" means the Internal Revenue Code of 1986, as amended, and any statutes which replace or supplement the Internal Revenue Code of 1986.
- "Computation Date" means each five-year period from the Closing Date through the last day of the fifth and each succeeding fifth Bond Year.
- "Excess Earnings" means the amount earned on all Nonpurpose Investments minus the amount which would have been earned if such Nonpurpose Investments were invested at a rate equal to the Bond Yield, plus any income attributable to such excess.
- "Final Bond Retirement Date" means the date on which the Bonds are actually paid in full.
- "Governmental Obligations" means direct general obligations of, or obligations the timely payment of the principal of and interest on which is unconditionally guaranteed by the United States.
- "Gross Proceeds" as defined in Regulation 1.148-1(b), means any Proceeds of the Bonds and any replacement proceeds (as defined in Regulation 1.148-1(c)) of the Bonds.
- "Gross Proceeds Funds" means the Project Fund, Proceeds held to pay cost of issuance, and any other fund or account held for the benefit of the owners of the Bonds or containing Gross Proceeds of the Bonds except the Bond Fund and the Rebate Fund.
- "Issue Price" as defined in Regulation 1.148-1(b) and (f)(2), means the price paid by the Purchaser of the Bonds. The Issue Price is \$5,679,000, as set forth in Exhibit A.

- "Issuer" means the Shenandoah Community School District, a public school corporation, in the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa.
- "Minor Portion of the Bonds", as defined in Regulation 1.148-2(g), means the lesser of five (5) percent of Proceeds or \$100,000. The Minor Portion of the Bonds is computed to be \$100,000.
- "Nonpurpose Investments" means any investment property which is acquired with Gross Proceeds and is not acquired to carry out the governmental purpose of the Bonds, and may include but is not limited to U.S. Treasury bonds, corporate bonds, or certificates of deposit.
- "Proceeds" as defined in Regulation 1.148-1(b), means Sale Proceeds, investment proceeds and transferred proceeds of the Bonds.
- "Project" means to improve, remodel, repair, furnish and equip the high school facility and site, including HVAC, energy efficiency, accessibility, technology, safety and parking improvements, as more fully described in the Resolution.
- "Project Fund" shall mean the fund required to be established by the Resolution for the deposit of the Proceeds of the Bonds.
- "Purchasers" means Branch Banking and Trust Company, a North Carolina Banking Corporation, constituting the initial purchasers of the Bonds from the Issuer.
- "Rebate Amount" means the amount computed as described in this Certificate.
- "Rebate Fund" means the fund to be created, if necessary, pursuant to this Certificate.
- "Rebate Payment Date" means a date chosen by the Issuer which is not more than 60 days following each Computation Date or the Final Bond Retirement Date.
- "Regulations" means the Income Tax Regulations, amendments and successor provisions promulgated by the Department of the Treasury under Sections 103, 148 and 149 of the Code, or other Sections of the Code relating to "arbitrage bonds", including without limitation Regulations 1.148-1 through 1.148-11, 1.149(b)-1, 1.149-d(1), 1.150-1 and 1.150-2.
- "Replacement Proceeds" include, but are not limited to, sinking funds, amounts that are pledged as security for an issue, and amounts that are replaced because of a sufficiently direct nexus to a governmental purpose of an issue.
- "Resolution" means the resolution of the Issuer adopted on November 11, 2019, authorizing the issuance of the Bonds.

- "Sale Proceeds" as defined in Regulation 1.148-1(b), means any amounts actually or constructively received from the sale of the Bonds, including amounts used to pay underwriter's discount or compensation and accrued interest other than pre-issuance accrued interest.
- "Sinking Fund" means the Bond Fund.
- "SLGS" means demand deposit Treasury securities of the State and Local Government Series.
- "Tax Exempt Obligations" means bonds or other obligations the interest on which is excludable from the gross income of the owners thereof under Section 103 of the Code and include certain regulated investment companies, stock in tax-exempt mutual funds and demand deposit SLGS.
- "Taxable Obligations" means all investment property, obligations or securities other than Tax Exempt Obligations.
- "Verification Certificate" means the Certificate of the Purchaser attached to this Tax Exemption Certificate as Exhibit A, and the Bond Purchase Agreement.

## ARTICLE II

### SPECIFIC CERTIFICATIONS, REPRESENTATIONS AND AGREEMENTS

The Issuer hereby certifies, represents and agrees as follows:

#### Section 2.1 Authority to Certify and Expectations

(a) The undersigned officer of the Issuer along with other officers of the Issuer, are charged with the responsibility of issuing the Bonds.

(b) This Certificate is being executed and delivered in part for the purposes specified in Section 1.148-2(b)(2) of the Regulations and is intended (among other purposes) to establish reasonable expectations of the Issuer at this time.

(c) The Issuer has not been notified of any disqualification or proposed disqualification of it by the Commissioner of the Internal Revenue Service as a bond issuer which may certify bond issues under Section 1.148-2(b)(2) of the Regulations.

(d) The certifications, representations and agreements set forth in this Article II are made on the basis of the facts, estimates and circumstances in existence on the date hereof, including the following: (1) with respect to amounts expected to be received from delivery of the Bonds, amounts actually received, (2) with respect to payments of amounts into various funds or accounts, review of the authorizations or directions for such payments made by the Issuer pursuant to the Resolution and this Certificate, (3) with respect to the Issue Price, the certifications of the Purchasers as set forth in the Verification Certificate,

(4) with respect to expenditure of the Proceeds of the Bonds, actual expenditures and reasonable expectations of the Issuer as to when the Proceeds will be spent for purposes of the Project, (5) with respect to Bond Yield, review of the Verification Certificate, and (6) with respect to the amount of governmental and qualified 501(c)(3) bonds to be issued during the calendar year, the budgeting and present planning of Issuer. The Issuer has no reason to believe such facts, estimates or circumstances are untrue or incomplete in any material way.

(e) To the best of the knowledge and belief of the undersigned officer of the Issuer, there are no facts, estimates or circumstances that would materially change the representations, certifications or agreements set forth in this Certificate, and the expectations herein set out are reasonable.

(f) No arrangement exists under which the payment of principal or interest on the Bonds would be directly or indirectly guaranteed by the United States or any agency or instrumentality thereof.

(g) After the expiration of any applicable temporary periods, and excluding investments in a bona fide debt service fund or reserve fund, not more than five percent (5%) of the Proceeds of the Bonds will be (a) used to make loans which are guaranteed by the United States or any agency or instrumentality thereof, or (h) invested in federally insured deposits or accounts.

(h) The Issuer will file with the Internal Revenue Service in a timely fashion Form 8038-G, Information Return for Tax-Exempt Governmental Obligations with respect to the Bonds and such other reports required to comply with the Code and applicable Regulations.

(i) The Issuer will take no action which would cause the Bonds to become "private activity bonds" as defined in Section 141 (a) of the Code, including any use of the Project by any person other than a governmental unit if such use will be by other than a member of the general public. None of the Proceeds of the Bonds will be used directly or indirectly to make or finance loans to any person other than a governmental unit.

(j) The Issuer will make no change in the nature or purpose of the Project except as provided in Section 6.1 hereof.

(k) Except as provided in the Resolution, the Issuer will not establish any sinking fund, bond fund, reserve fund, debt service fund or other fund reasonably expected to be used to pay debt service on the Bonds (other than the Bond Fund and any Reserve Fund), exercise its option to redeem Bonds prior to maturity or effect a refunding of the Bonds.

(l) No bonds or other obligations of the Issuer (1) were sold in the 15 days preceding the date of sale of the Bonds, (2) were sold or will be sold within the 15 days after the date of sale of the Bonds, (3) have been delivered in the past 15 days or (4) will be delivered in the next 15 days pursuant to a common plan of financing for the issuance of the Bonds and payable out of substantially the same source of revenues.



(m) None of the Proceeds of the Bonds will be used directly or indirectly to replace funds of the Issuer used directly or indirectly to acquire obligations having a yield higher than the Bond Yield.

(n) No portion of the Bonds is issued for the purpose of investing such portion at a higher yield than the Bond Yield.

(o) The Issuer does not expect that the Proceeds of the Bonds will be used in a manner that would cause them to be "arbitrage bonds" as defined in Section 148(a) of the Code. The Issuer does not expect that the Proceeds of the Bonds will be used in a manner that would cause the interest on the Bonds to be includible in the gross income of the owners of the Bonds under the Code. The Issuer will not intentionally use any portion of the Proceeds to acquire higher yielding investments.

(p) The Issuer will not use the Proceeds of the Bonds to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage.

(q) The Issuer has not issued more Bonds, issued the Bonds earlier, or allowed the Bonds to remain outstanding longer than is reasonably necessary to accomplish the governmental purposes of the Bonds and in fact, the Bonds will not remain outstanding longer than 120% of the economic useful life of the assets financed with the Proceeds of the Bonds.

(r) The Bonds will not be Hedge Bonds as described in Section 149(g)(3) of the Code because the Issuer reasonably expects that it will meet the Expenditure test set forth in Section 2.5(b) hereof and that 50% or more of the Proceeds will not be invested in Nonpurpose Investments having a substantially guaranteed yield for four or more years.

Except for costs of issuance, all Sale Proceeds and investment earnings thereon will be expended for costs of the type that would be chargeable to capital accounts under the Code pursuant to federal income tax principles if the Issuer were treated as a corporation subject to federal income taxation.

## Section 2.2 Receipts and Expenditures of Sale Proceeds

Sale Proceeds (\$5,679,000) are expected to be deposited and expended as follows:

(a) \$91,127.00 representing costs of issuing the Bonds will be used within six months of the Closing Date to pay the costs of issuance of the Bonds (with any excess remaining on deposit in the Project Fund); and

(b) \$5,587,873.00 will be deposited into the Project Fund and will be used together with earnings thereon to pay the costs of the Project and will not exceed the amount necessary to accomplish the governmental purposes of the Bonds.

### Section 2.3 Purpose of Bonds

The Issuer is issuing the Bonds to pay the costs to improve, remodel, repair, furnish and equip the high school facility and site, including HVAC, energy efficiency, accessibility, technology, safety and parking improvements.

### Section 2.4 Facts Supporting Tax-Exemption Classification

#### Governmental Bonds

##### Private Business Use/Private Security or Payment Tests

The Bonds are considered to be governmental bonds, not subject to the provisions of the alternate minimum tax. The Proceeds will be used for the purposes described in Section 2.3 hereof. These bonds are not private activity bonds because no amount of Proceeds of the Bonds is to be used in a trade or business carried on by a non-governmental unit. Rather, the Proceeds will be used to finance the general government operations and facilities of the Issuer described in Section 2.3 hereof. None of the payment of principal or interest on the Bonds will be derived from, or secured by, money or property used in a trade or business of a non-governmental unit. In addition, none of the governmental operations or facilities of the Issuer being financed with the Proceeds of the Bonds are subject to any lease, management contract or other similar arrangement or to any arrangement for use other than as by the general public.

##### Private Loan Financing Test

No amount of Proceeds of the Bonds is to be used directly or indirectly to make or finance loans to persons other than governmental units.

### Section 2.5 Facts Supporting Temporary Periods for Proceeds

(a) Time Test. Not later than six months after the Closing Date, the Issuer will incur a substantial binding obligation to a third party to expend at least 5% of the net Sale Proceeds of the Bonds.

(h) Expenditure Test. Not less than 85% of the net Sale Proceeds will be expended for Project costs, including the reimbursement of other funds expended to date, within a three-year temporary period from the Closing Date.

(e) Due Diligence Test. Not later than six months after Closing, work on the Project will have commenced and will proceed with due diligence to completion.

(d) Proceeds of the Bonds representing less than six months accrued interest on the Bonds will be spent within six months of this date to pay interest on the Bonds, and will be invested without restriction as to yield for a temporary period not in excess of six months.

## Section 2.6 Resolution Funds at Restricted or Unrestricted Yield

(a) Proceeds of the Bonds will be held and accounted for in the manner provided in the Resolution. The Issuer has not and does not expect to create or establish any other bond fund, reserve fund, or similar fund or account for the Bonds. The Issuer has not and will not pledge any moneys or Taxable Obligations in order to pay debt service on the Bonds or restrict the use of such moneys or Taxable Obligations so as to give reasonable assurances of their availability for such purposes.

(b) Any monies which are invested beyond a temporary period are expected to constitute less than a major portion of the Bonds or to be restricted for investment at a yield not greater than one-eighth of one percent above the Bond Yield.

(c) The Issuer has established and will use the Bond Fund primarily to achieve a proper matching of revenues and debt service within each Bond Year and the Issuer will apply moneys deposited into the Bond Fund to pay the principal of and interest on the Bonds. Such Fund will be depleted at least once each Bond Year except for a reasonable carryover amount. The carryover amount will not exceed the greater of (1) one year's earnings on the Bond Fund or (2) one-twelfth of Annual Debt Service. The Issuer will spend moneys deposited from time to time into such fund within 13 months after the date of deposit. Revenues, intended to be used to pay debt service on the Bonds, will be deposited into the Bond Fund as set forth in the Resolution. The Issuer will spend interest earned on moneys in such fund not more than 12 months after receipt. Accordingly, the Issuer will treat the Bond Fund as a bona fide debt service fund as defined in Regulation 1.148-1(b).

Investment of amounts on deposit in the Bond Fund will not be subject to arbitrage rebate requirements as the Bonds meet the safe harbor set forth in Regulation 1.148-3(k), because the average annual debt service on the Bonds will not exceed \$2,500,000.

(d) The Minor Portion of the Bonds will be invested without regard to yield.

## Section 2.7 Pertaining to Yields

(a) The purchase price of all Taxable Obligations to which restrictions apply under this Certificate as to investment yield or rebate of Excess Earnings, if any, has been and shall be calculated using (i) the price taking into account discount, premium and accrued interest, as applicable, actually paid or (ii) the fair market value if less than the price actually paid and if such Taxable Obligations were not purchased directly from the United States Treasury. The Issuer will acquire all such Taxable Obligations directly from the United States Treasury or in an arm's length transaction without regard to any amounts paid to reduce the yield on such Taxable Obligations. The Issuer will not pay or permit the payment of any amounts (other than to the United States) to reduce the yield on any Taxable Obligations. Obligations pledged to the payment of debt service on the Bonds, or deposited into any reserve fund after they have been acquired by the Issuer will be treated as though they were acquired for their fair market value on the date of such pledge or deposit.

Obligations on deposit in any reserve fund on the Closing Date shall be treated as if acquired for their fair market value on the Closing Date.

(b) Qualified guarantees have not been used in computing yield.

(c) The Bond Yield has been computed as not less than 2.1298 percent. This Bond Yield has been computed on the basis of a purchase price for the Bonds equal to the Issue Price.

### ARTICLE III

#### REBATE

##### Section 3.1 Records

Sale Proceeds of the Bonds will be held and accounted for in the manner provided in the Resolution. The Issuer will maintain adequate records for funds created by the Resolution and this Certificate including all deposits, withdrawals, transfers from, transfers to, investments, reinvestments, sales, purchases, redemptions, liquidations and use of money or obligations until six years after the Final Bond Retirement Date.

##### Section 3.2 Rebate Fund

(a) In the Resolution, the Issuer has covenanted to pay to the United States the Rebate Amount, an amount equal to the Excess Earnings on the Gross Proceeds Funds, if any, at the times and in the manner required or permitted and subject to stated special rules and allowable exceptions.

(b) The Issuer may establish a fund pursuant to the Resolution and this Certificate which is herein referred to as the Rebate Fund. The Issuer will invest and expend amounts on deposit in the Rebate Fund in accordance with this Certificate.

(c) Moneys in the Rebate Fund shall be held by the Issuer or its designee and, subject to Sections 3.4, 3.5 and 6.1 hereof, shall be held for future payment to the United States as contemplated under the provisions of this Certificate and shall not constitute part of the trust estate held for the benefit of the owners of the Bonds or the Issuer.

(d) The Issuer will pay to the United States from legally available money of the Issuer (whether or not such available money is on deposit in any fund or account related to the Bonds) any amount which is required to be paid to the United States.

##### Section 3.3 Exceptions to Rebate

The Issuer reasonably expects that the Bonds are eligible for one or more exceptions from the arbitrage rebate rules set forth in the Regulations. If any Proceeds are ineligible, or become ineligible, for an exception to the arbitrage rebate rules, the Issuer will comply with the provisions of this Article III. A description of the applicable rebate exception is as follows:

- **School District Small Issuer Exception**

The reasonably anticipated amount of tax exempt governmental obligations (other than private activity bonds) which will be issued by the Issuer during the calendar year will not exceed (i) fifteen million dollars (\$15,000,000) total and (ii) five million dollars (\$5,000,000) for purposes other than the construction of public school facilities within the meaning of Section 148(f)(4)(D)(vii) of the Code.

If the Issuer fails to meet an applicable rebate exception, the Issuer shall comply with the arbitrage rebate requirements of the Code.

**Section 3.4 Calculation of Rebate Amount**

(a) As soon after each Computation Date as practicable, the Issuer shall, if necessary, calculate and determine the Excess Earnings on the Gross Proceeds Funds (the "Rebate Amount"). All calculations and determinations with respect to the Rebate Amount will be made on the basis of actual facts as of the Computation Date and reasonable expectations as to future events.

(b) If the Rebate Amount exceeds the amount currently on deposit in the Rebate Fund, the Issuer may deposit an amount in the Rebate Fund such that the balance in the Rebate Fund after such deposit equals the Rebate Amount. If the amount in the Rebate Fund exceeds the Rebate Amount, the Issuer may withdraw such excess amount provided that such withdrawal can be made from amounts originally transferred to the Rebate Fund and not from earnings thereon, which may not be transferred, and only if such withdrawal may be made without liquidating investments at a loss.

**Section 3.5 Rebate Requirements and the Bond Fund**

It is expected that the Bond Fund described in the Resolution and Section 2.6(c) of this Certificate will be treated as a bona fide debt service fund as defined in Regulation 1.148-1(b). As such, any amount earned during a Bond Year on the Bond Fund and amounts earned on such amounts, if allocated to the Bond Fund, will not be taken into account in calculating the Rebate Amount for the reasons outlined in Section 2.6(c) hereof. However, should the Bond Fund cease to be treated as a bona fide debt service fund, the Bond Fund will become subject to the rebate requirements set forth in Section 3.4 hereof.

**Section 3.6 Investment of the Rebate Fund**

(a) Immediately upon a transfer to the Rebate Fund, the Issuer may invest all amounts in the Rebate Fund not already invested and held in the Rebate Fund, to the extent possible, in (1) SLGS, such investments to be made at a yield of not more than one-eighth of one percent above the Bond Yield, (2) Tax Exempt Obligations, (3) direct obligations of the United States or (4) certificates of deposit of any bank or savings and loan association. All investments in the Rebate Fund shall be made to mature not later than the next Rebate Payment Date.

(b) If the Issuer invests in SLGS, the Issuer shall file timely subscription forms for such securities (if required). To the extent possible, amounts received from maturing SLGS shall be reinvested immediately in zero yield SLGS maturing on or before the next Rebate Payment Date.

### Section 3.7 Payment to the United States

(a) On each Rebate Payment Date, the Issuer will pay to the United States at least ninety percent (90%) of the Rebate Amount less a computation credit of \$1,000 per Bond Year for which the payment is made.

(b) The Issuer will pay to the United States not later than sixty (60) days after the Final Bond Retirement Date all the rebatable arbitrage as of such date and any income attributable to such rebatable arbitrage as described in Regulation 1.148-3(f)(2).

(c) If necessary, on each Rebate Payment Date, the Issuer will mail a check to the Internal Revenue Service Center, Ogden, UT 84201. Each payment shall be accompanied by a copy of Form 8038-T, Arbitrage Rebate, filed with respect to the Bonds or other information reporting form as is required to comply with the Code and applicable Regulations.

### Section 3.8 Records

(a) The Issuer will keep and retain adequate records with respect to the Bonds, the Gross Proceeds Funds, the Bond Fund, and the Rebate Fund until six years after the Final Bond Retirement Date. Such records shall include descriptions of all calculations of amounts transferred to the Rebate Fund, if any, and descriptions of all calculations of amounts paid to the United States as required by this Certificate. Such records will also show all amounts earned on moneys invested in such funds, and the actual dates and amounts of all principal, interest and redemption premiums (if any) paid on the Bonds.

(b) Records relating to the investments in such Funds shall completely describe all transfers, deposits, disbursements and earnings including:

(1) a complete list of all investments and reinvestments of amounts in each such Fund including, if applicable, purchase price, purchase date, type of security, accrued interest paid, interest rate, dated date, principal amount, date of maturity, interest payment dates, date of liquidation, receipt upon liquidation, market value of such investment on the Final Bond Retirement Date if held by the Issuer on the Final Bond Retirement Date, and market value of the investment on the date pledged to the payment of the Bonds or the Closing Date if different from the purchase date.

(2) the amount and source of each payment to, and the amount, purpose and payee of each payment from, each such Fund.

Section 3.9 Additional Payments

The Issuer hereby agrees to pay to the United States from legally available money of the Issuer (whether or not such available money is on deposit in any fund or account related to the Bonds) any amount which is required to be paid to the United States, but which is not available in a fund related to the Bonds for transfer to the Rebate Fund or payment to the United States.

ARTICLE IV

INVESTMENT RESTRICTIONS

Section 4.1 Avoidance of Prohibited Payments

The Issuer will not enter into any transaction that reduces the amount required to be deposited into the Rebate Fund or paid to the United States because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Bond Yield not been relevant to either party. The Issuer will not invest or direct the investment of any funds in a manner which reduces an amount required to be paid to the United States because such transaction results in a small profit or larger loss than would have resulted if the transaction had been at arm's length and had the Bond Yield not been relevant to the Issuer. In particular, notwithstanding anything to the contrary contained herein or in the Resolution, the Issuer will not invest or direct the investment of any funds in a manner which would violate any provision of this Article IV.

Section 4.2 Market Price Requirement

(a) The Issuer will not purchase or direct the purchase of Taxable Obligations for more than the then available market price for such Taxable Obligations. The Issuer will not sell, liquidate or direct the sale or liquidation of Taxable Obligations for less than the then available market price.

(b) For purposes of this Certificate, United States Treasury obligations purchased directly from the United States Treasury will be deemed to be purchased at the market price.

Section 4.3 Investment in Certificates of Deposit

(a) Notwithstanding anything to the contrary contained herein or in the Resolution, the Issuer will invest or direct the investment of funds on deposit in the Reserve Fund, any other Gross Proceeds Fund, the Bond Fund, and the Rebate Fund, in a certificate of deposit of a bank or savings bank which is permitted by law and by the Resolution only if the purchase price of such a certificate of deposit is treated as its fair market value on the purchase date and if the yield on the certificate of deposit is not less than (1) the yield on reasonably comparable direct obligations of the United States; and (2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(b) The certificate of deposit described in paragraph 4.3(a) above must be executed by a dealer who maintains an active secondary market in comparable certificates of deposit and must be based on actual trades adjusted to reflect the size and term of that certificate of deposit and the stability and reputation of the bank or savings bank issuing the certificate of deposit.

#### Section 4.4 Investment Pursuant to Investment Contracts and Agreements

The Issuer will invest or direct the investment of funds on deposit in the Gross Proceeds Funds, the Bond Fund, and the Rebate Fund pursuant to an investment contract (including a repurchase agreement) only if all of the following requirements are satisfied:

(a) The Issuer makes a bona fide solicitation for the purchase of the investment. A bona fide solicitation is a solicitation that satisfies all of the following requirements:

(1) The bid specifications are in writing and are timely forwarded to potential providers.

(2) The bid specifications include all material terms of the bid. A term is material if it may directly or indirectly affect the yield or the cost of the investment.

(3) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the issuer or any other person (whether or not in connection with the Bonds), and that the bid is not being submitted solely as a courtesy to the issuer or any other person for purposes of satisfying the requirements of paragraph (d)(6)(iii)(B)(1) or (2) of Section 1.148-5 of the Regulations.

(4) The terms of the bid specifications are commercially reasonable. A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment.

(5) For purchases of guaranteed investment contracts only, the terms of the solicitation take into account the Issuer's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) All potential providers have an equal opportunity to bid and no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.

(7) At least three reasonably competitive providers are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.



(b) The bids received by the Issuer meet all of the following requirements:

(1) The Issuer receives at least three bids from providers that the Issuer solicited under a bona fide solicitation meeting the requirements of paragraph (d)(6)(iii)(A) of Section 1.148-5 of the Regulations and that do not have a material financial interest in the issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue. In addition, any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue. A provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(2) At least one of the three bids described in paragraph (d)(6)(iii)(B)(1) of Section 1.148-5 of the Regulations is from a reasonably competitive provider, within the meaning of paragraph (d)(6)(iii)(A)(7) of Section 1.148-5 of the Regulations.

(3) If the Issuer uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

(c) The winning bid meets the following requirements:

(1) Guaranteed investment contracts. If the investment is a guaranteed investment contract, the winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(2) Other investments. If the investment is not a guaranteed investment contract, the winning bid is the lowest cost bona fide bid (including any broker's fees).

(d) The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the investment.

(e) The Issuer will retain the following records with the bond documents until three years after the last outstanding bond is redeemed:

(1) For purchases of guaranteed investment contracts, a copy of the contract, and for purchases of investments other than guaranteed investment contracts, the purchase agreement or confirmation.

(2) The receipt or other record of the amount actually paid by the Issuer for the investments, including a record of any administrative costs paid by the Issuer, and the certification under paragraph (d)(6)(iii)(D) of Section 1.148-5 of the Regulations.

(3) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(4) The bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(5) For purchases of investments other than guaranteed investment contracts, the cost of the most efficient portfolio of State and Local Government Series Securities, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

#### Section 4.5 Records

The Issuer will maintain records of all purchases, sales, liquidations, investments, reinvestments, redemptions, disbursements, deposits, and transfers of amounts on deposit.

#### Section 4.6 Investments to be Legal

All investments required to be made pursuant to this Certificate shall be made to the extent permitted by law. In the event that any such investment is determined to be ultra vires, it shall be liquidated and the proceeds thereof shall be invested in a legal investment, provided that prior to reinvesting such proceeds, the Issuer shall obtain an opinion of Bond Counsel to the effect that such reinvestment will not cause the Bonds to become arbitrage bonds under Sections 103, 148, 149, or any other applicable provision of the Code.

### ARTICLE V

#### GENERAL COVENANTS

The Issuer hereby covenants to perform all acts within its power necessary to ensure that the reasonable expectations set forth in Article II hereof will be realized. The Issuer reasonably expects to comply with all covenants contained in this Certificate.

### ARTICLE VI

#### AMENDMENTS AND ADDITIONAL AGREEMENTS

##### Section 6.1 Opinion of Bond Counsel; Amendments

The various provisions of this Certificate need not be observed and this Certificate may be amended or supplemented at any time by the Issuer if the Issuer receives an opinion or opinions of Bond Counsel that the failure to comply with such provisions will not cause any of the Bonds to become "arbitrage bonds" under the Code and that the terms of such amendment or supplement will not cause any of the Bonds to become "arbitrage bonds" under the Code, or otherwise cause interest on any of the Bonds to become includable in gross income for federal income tax purposes.

Section 6.2 Additional Covenants, Agreements

The Issuer hereby covenants to make, execute and enter into (and to take such actions, if any, as may be necessary to enable it to do so) such agreements as may be necessary to comply with any changes in law or regulations in order to preserve the tax-exempt status of the Bonds to the extent that it may lawfully do so. The Issuer further covenants (1) to impose such limitations on the investment or use of moneys or investments related to the Bonds, (2) to make such payments to the United States Treasury, (3) to maintain such records, (4) to perform such calculations, and (5) to perform such other lawful acts as may be necessary to preserve the tax-exempt status of the Bonds.

Section 6.3 Internal Revenue Service Audits

The Internal Revenue Service has not audited the Issuer regarding any obligations issued by or on behalf of the Issuer. To the best knowledge of the Issuer, no such obligations of the Issuer are currently under examination by the Internal Revenue Service.

Section 6.4 Amendments

Except as otherwise provided in Section 6.1 hereof, all the rights, powers, duties and obligations of the Issuer shall be irrevocable and binding upon the Issuer and shall not be subject to amendment or modification by the Issuer.

ARTICLE VII

QUALIFIED TAX EXEMPT OBLIGATIONS

The Issuer, a "qualified small issuer," designates the Bonds as "qualified tax exempt obligations" as defined in Code Section 265(b)(3) and represents that the reasonably anticipated amount of tax-exempt governmental and qualified 501(c)(3) obligations (including for this purpose tax exempt installment sales, lease or lease purchase agreements or other tax exempt obligations) which will be issued during the current calendar year will not exceed ten million dollars (\$10,000,000).

In support of the foregoing, the Issuer states:

(a) In the current calendar year the Issuer has issued governmental or qualified 501(c)(3) obligations as follows:

- This issue of \$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019.

(b) The Issuer expects to issue during the remainder of the calendar year governmental or qualified 501(c)(3) obligations as follows:

- None.

(c) The Issuer has subordinate entities or is subordinate to another entity governed by separate governing bodies which have issued or expect to issue governmental or qualified 501(c)(3) obligations on behalf of the Issuer during the calendar year which must be aggregated under Code Section 265(b)(3)(F) as follows:

- None.

(d) The Issuer is a member of or affiliated with one or more organizations (such as an Iowa Code Chapter 28E or 28F organization or other multimember body under which more than one governmental entity receives benefits) governed by a separate governing body which has or expects to issue governmental or qualified 501(c)(3) obligations during the calendar year all or a portion of which are allocable to the Issuer under Code Section 265(b)(3)(C)(iii) as follows:

- None.

IN WITNESS WHEREOF, the Issuer has caused this Certificate to be executed by its duly authorized officer, all as of the day first above written.

---

Treasurer, Shenandoah Community  
School District, State of Iowa

01637164-1\18883-022

**EXHIBIT "A"**

**SHENANDOAH COMMUNITY SCHOOL DISTRICT  
\$5,679,000 SCHOOL INFRASTRUCTURE SALES, SERVICES AND  
USE TAX REVENUE BONDS, SERIES 2019**

**CERTIFICATE OF THE PURCHASER**

The undersigned, on behalf of BRANCH BANKING AND TRUST COMPANY, A NORTH CAROLINA BANKING CORPORATION (the "Purchaser"), hereby certifies as set forth below with respect to the purchase of the above-captioned obligations (the "Bonds").

1. **Purchase of the Bonds.** On the date of this certificate, the Purchaser is purchasing the Bonds for the amount of \$5,679,000. The Purchaser is not acting as an Underwriter with respect to the Bonds. The Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Bonds (or any portion of the Bonds or any interest in the Bonds). The Purchaser has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Bonds and the Purchaser has not agreed with the Issuer pursuant to a written agreement to sell the Bonds to persons other than the Purchaser or a related party to the Purchaser.

2. **Defined Terms.**

a) **Public** means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

b) **Underwriter** means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Exemption Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bond Counsel, Ahlers & Cooney, P.C., in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

BRANCH BANKING AND TRUST COMPANY,  
A NORTH CAROLINA BANKING  
CORPORATION, as Purchaser

By : \_\_\_\_\_

Name: \_\_\_\_\_

Dated: Date of Delivery

## **Wire Transfer Agreement**

This Wire Transfer Agreement is dated as of November 25, 2019 (this "Agreement") and is by and between the Shenandoah Community School District, Iowa, a public school district under the laws of the State of Iowa (the "Borrower") and BRANCH BANKING AND TRUST COMPANY, A NORTH CAROLINA BANKING CORPORATION ("BB&T").

### RECITALS

The Borrower is, simultaneously with the execution and delivery of this Agreement, executing and delivering School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019, dated the date hereof (the "Contract"), between the Borrower and BB&T. The purpose of the Contract is to provide for BB&T's advance of \$5,679,000 to the Borrower to enable the Borrower to finance school infrastructure projects, including to improve, remodel, repair, furnish and equip the high school facility and site, including HVAC, energy efficiency, accessibility, technology, safety and parking improvements, and costs of issuance.

In order to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, BB&T and the Borrower hereby agree to the following:

**Section 1. Wire Transfer Requirements.** In the event a wire transfer is made by BB&T to disburse funds as contemplated by the Contract (a "Disbursement"), said wire transfer shall be delivered as directed in a written "Disbursement Authorization" provided to BB&T by a representative of the Borrower, subject to the terms and conditions set forth herein. For the purposes of this Agreement, a representative of the Borrower shall include employees and elected and/or appointed officials of the Borrower, bond counsel, the Borrower's legal counsel, or the Borrower's financial advisor.

**Section 2. Verification Procedures.** Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to BB&T in person by a representative of the Borrower, BB&T shall verify such Disbursement Authorization verbally via telephone communication with a representative of the Borrower. The Borrower shall ensure that a representative of the Borrower will provide such verification to BB&T. The Borrower shall not disclose, or allow to be disclosed, such BB&T verification procedures to any third party unless there is a legitimate business need to make such disclosure or such disclosure is required by law, and the Borrower accepts the risk of such third party knowledge of the security procedures. If the Borrower has reason to believe that a security procedure has been obtained by or disclosed to an unauthorized person or learns of any unauthorized transfer or of any discrepancy in a transfer request, then the Borrower shall notify BB&T immediately.

**Section 3. Payee Identification.** The Borrower is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to BB&T by a representative of the Borrower, including but not limited to the bank name and its ABA number, beneficiary's account name and account number and beneficiary's physical address, together with other information requested by BB&T (collectively, "Remittance Instructions"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Borrower acknowledges that BB&T may make payment on the basis of the

account number alone, that BB&T is not obligated to detect such errors, and that the Borrower assumes the risk of any loss resulting therefrom.

**Section 4. Duty to Reconcile Written Confirmation.** Upon request from a representative of the Borrower, BB&T shall use its best efforts to send a representative of the Borrower written confirmation of the Disbursement in the form of a reference number, beneficiary name and wire amount. A representative of the Borrower shall promptly review and reconcile the written confirmation of the Disbursement sent by BB&T, and shall report to BB&T in writing, promptly, but in no event later than ten (10) business days after the date of such written confirmation, any unauthorized, erroneous, unreceived or improperly executed payment. BB&T and the Borrower agree that ten (10) business days is a reasonable time for the detection and reporting to BB&T of such information. After that time, all items on the written confirmation will be considered correct and the Borrower will be precluded from recovering from BB&T if such wire transfer identified in the written confirmation was actually made by BB&T. For the avoidance of doubt, any such writings can be provided electronically.

**Section 5. Unauthorized Payments.** Notwithstanding any other provision herein, if a Disbursement has been verified by a representative of the Borrower pursuant to Section 2, it shall be binding on the Borrower if BB&T acted in good faith in making such Disbursement.

**Section 6. Recordation.** BB&T may record any telephone conversation between BB&T and a representative of the Borrower in order to reduce the risk of unauthorized or erroneous transfers. BB&T may retain such recordings for as long as BB&T may deem necessary.

**Section 7. Indemnification and Hold Harmless.** If BB&T complies with the provisions of this Agreement, the Borrower agrees that BB&T shall not be responsible for any communication or miscommunication by a representative of the Borrower, and the Borrower further agrees to indemnify, to the extent allowed by law, BB&T and hold BB&T harmless from and against any and all losses, claims, expenses, suits, costs or damages, demands or liabilities of whatever kind or nature, whether now existing or hereafter relating in any way to a wire transfer made pursuant to the Contract.

**Section 8. Applicable Law.** All wire transfer orders are governed by Article 4A of the Uniform Commercial Code, except as any provisions thereof that may be and are modified by the terms hereof. If any part of the applicable wire transfer order involves the use of the Fedwire, the rights and obligations of BB&T and the Borrower regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

**Section 9. Choice of Law.** The parties intend that Iowa law shall govern this Agreement.

**Section 10. Amendments.** This Agreement may not be modified or amended unless such amendment is in writing and signed by BB&T and the Borrower.

**Section 11. No Third-Party Beneficiaries.** There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Agreement.

**Section 12. Successors and Assigns.** All of the covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

**Section 13. Severability.** If any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement.

**Section 15. Termination.** This Agreement shall cease and terminate upon termination of the Contract.

**Section 16. E-Verify.** BB&T understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. BB&T uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended.



**IN WITNESS WHEREOF**, each of the parties has caused this Wire Transfer Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

SHENANDOAH COMMUNITY SCHOOL  
DISTRICT, IOWA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Attest:

Title: President of the Board of Directors

\_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary of the Board of Directors

BRANCH BANKING AND TRUST  
COMPANY, A NORTH CAROLINA  
BANKING CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WIRE TRANSFER AGREEMENT, DATED AS OF NOVEMBER 25, 2019

01643818-1\18883-022

STATE OF IOWA

)

) SS

DISTRICT CERTIFICATE

COUNTY OF PAGE

)

We, the President and Secretary of the Board of Directors of the Shenandoah Community School District (the "School District") in the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa, certify that the School District was organized under the provisions of Iowa Code Sections 275.12 to 275.23, inclusive, and operated as a school corporation under the laws of the State of Iowa; that the School District is located wholly within the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa, and that the School District and its Board of Directors (the "Board") have exercised the rights, powers and authorities given school corporations and board of directors by the statutes of the State of Iowa; and that the following persons are the officials of the School District and the Board:

<u>Name of Directors</u>	<u>Title</u>
Jean Fichter	President
Greg Ritchey	Vice President
Kathy Langley	Director
Adam Van Der Vliet	Director
Dr. Timothy Smith	Director
Lisa Holmes	Secretary of the Board of Directors

We further certify that the legality of the organization of the School District or the titles of any one of its officers to their respective offices have not been in any manner questioned; that litigation has not been threatened or instituted, questioning or tending to question the organization of the School District, or the inclusion of any territory, or the title of any of its officers, and that in particular no litigation of any kind whatsoever was pending on this date, involving the organization, reorganization, enlargement or changes in the boundaries of this School District.

According to the records, the named members of the Board were all duly and regularly elected to office, and are the legally elected, constituted and acting Board of Directors of the Shenandoah Community School District.

All meetings of the Board at which action was taken in connection with the \$5,679,000 School Infrastructure Sales, Services And Use Tax Revenue Bonds, Series 2019, were open to the public at all times in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Board and was duly given at least twenty-four hours prior to the commencement of the meeting by notification of the communications media having requested notice and posted on a bulletin board or other prominent place designated for the purpose and easily accessible to the public at the principal office of the Board, all pursuant to the provisions and in accordance with the conditions of the local rules of the Board and Iowa Code Chapter 21.

The President and Secretary whose signatures appear below are the qualified officials of the School District as designated below:

President

Jean Fichter  
(Typed or Printed Name)

\_\_\_\_\_  
(Original Signature)

Secretary

Lisa Holmes  
(Typed or Printed Name)

\_\_\_\_\_  
(Original Signature)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, subscribed and sworn to by before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jean Fichter and Lisa Holmes, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of the Shenandoah Community School District, State of Iowa, and that the said Jean Fichter and Lisa Holmes, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said School District, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

Dated at \_\_\_\_\_, Iowa this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Secretary of the Board of Directors

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## AUTHENTICATION ORDER

As Secretary of the Board of Directors of the Shenandoah Community School District, in the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa (the "Issuer"), pursuant to a Resolution of the Board of Directors adopted on November 11, 2019, authorizing the issuance and delivery of the Bonds (the "Resolution"), acting for and on behalf of the Issuer, I deliver to UMB Bank, N.A. (the "Registrar"), \$5,679,000 aggregate principal amount of Issuer's School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019 (the "Bonds"), dated the date of delivery, in fully registered form, bearing interest, maturing and conforming to the specifications set forth in the Resolution.

Each Bond has been executed on behalf of the Issuer with the manual or facsimile signature of the President of the Board of Directors and the manual or facsimile signature of the Secretary of the Board of Directors.

The Registrar is requested to authenticate the Bonds and to complete the records with respect to registration as provided in the Resolution and the instructions of Branch Banking and Trust Company, a North Carolina Banking Corporation, as the Original Purchaser (the "Purchaser") as to designation of owners of the Bonds.

Upon authentication, the Registrar is authorized to deliver the Bonds on behalf of Issuer to the Purchaser, or their registered assigns, upon receipt of payment, in immediately available funds of the purchase price of \$5,679,000, plus accrued interest to the date of delivery as shown on attached Exhibit A, subject to the receipt at closing of the opinion of bond counsel. Registrar shall deposit moneys to the account of Issuer as designated in Exhibit A.

The acknowledgment of receipt of the Bonds by the Purchaser, or registered assigns, must be evidenced by separate signed receipts or certificates.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Secretary of the Board of Directors of the  
Shenandoah Community School District

DELIVERY CERTIFICATE

We certify that we are the President and Secretary of the Shenandoah Community School District in the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa (the "School District"); that in pursuance of the provisions of Section 423E.5 and Chapter 423F, Code of Iowa, and pursuant to a Resolution of the Board of Directors of the School District adopted on November 11, 2019, authorizing the issuance and delivery of the Bonds, there have been authorized and on this day by us lawfully executed, issued, caused to be registered and authenticated and delivered fully registered School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019 (the "Bonds") of the School District, in the amount of \$5,679,000, dated November 25, 2019, bearing interest and maturing in each year as follows:

<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
\$5,679,000	2.130%	January 1, 2031 <sup>(1)</sup>

<sup>(1)</sup>Term Bonds Maturing January 1, 2031. Bonds in the aggregate principal amount of \$5,679,000 shall be issued as Term Bonds maturing as to principal on January 1, 2031, shall bear interest at 2.130% per annum and shall be subject to mandatory redemption and payment at par and accrued interest in the principal amounts in each of the years as set forth as follows:

<u>The 2031 Term Bonds</u>		
<u>Principal Amount of Mandatory Redemption</u>	<u>Interest Rate</u>	<u>Date of Redemption</u>
\$437,000	2.130%	July 1, 2020
\$395,000	2.130%	July 1, 2021
\$406,000	2.130%	July 1, 2022
\$413,000	2.130%	July 1, 2023
\$425,000	2.130%	July 1, 2024
\$432,000	2.130%	July 1, 2025
\$439,000	2.130%	July 1, 2026
\$447,000	2.130%	July 1, 2027
\$460,000	2.130%	July 1, 2028
\$469,000	2.130%	July 1, 2029
\$898,000	2.130%	July 1, 2030
\$458,000	2.130%	January 1, 2031*

*\*Final Maturity*

Each of the Bonds being executed with the manual or facsimile signature of the President and the manual or facsimile signature of the Secretary of the Board of Directors of the School District

The Bonds have been delivered to:

Branch Banking and Trust Company, a North Carolina Banking Corporation

and have been paid for in accordance with the terms of the contract of sale and at a price of \$5,679,000 plus accrued interest.

We further certify that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence, or boundaries of the School District, or the titles of the undersigned officers to their respective positions, or the validity of the Bonds or the pledge of the School Infrastructure Tax Revenues (as defined in the Resolution) to the payment of the Bonds, or the power and duty of the School District to pledge the School Infrastructure Tax Revenues for the full and prompt payment of the principal and interest of the Bonds, and that none of the proceedings or authority for the issuance of the Bonds has been repealed, revoked, rescinded, or modified in any manner.

We further certify that the boundaries of this School District have not been changed since 2016; that none of the proceedings relating to the organization, reorganization, enlargement or changes in the boundaries of this School District as presently constituted has ever been declared invalid by any court, and that no proceedings have been instituted or are now pending involving any proposed changes in the boundaries of this School District.

We further certify that each of the officers whose signatures appear on the Bonds were in occupancy and possession of their respective offices at the time the Bonds were executed and do hereby adopt and affirm their signatures appearing in the Bonds.

We further certify that the present financial condition of the School District is as follows:

Total School Infrastructure Tax Revenue Bond indebtedness, including the above mentioned School Infrastructure Sales, Services and Use Tax Revenue Bonds	\$9,399,000
All other indebtedness of any kind payable from School Infrastructure Tax Revenues	\$-0-

IN WITNESS WHEREOF, we affix our respective signatures as of the date first above written.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

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## BOND PURCHASE AGREEMENT

This Bond Purchase Agreement is entered into between the Shenandoah Community School District in the Counties of Page, Fremont, Montgomery, and Mills, State of Iowa (the "School Corporation"), and Branch Banking and Trust Company, a North Carolina Banking Corporation (the "Purchaser"). The parties agree as follows:

1. The Purchaser will pay to the School Corporation the sum of \$5,679,000. The School Corporation's obligation to repay is evidenced by the issuance of School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019, in the aggregate principal amount of \$5,679,000 (the "Bonds").

2. The proceeds must be used as provided in the Resolution Authorizing the Issuance of Bonds adopted November 11, 2019 (the "Resolution").

3. The School Corporation agrees to repay the Bonds as provided in this Purchase Agreement and the Resolution. The Bonds, in substantially the form set forth in the Resolution, are executed and delivered to the Purchaser to evidence the School Corporation's obligation to repay the amounts payable. The Bonds are dated the date of delivery, with interest payable July 1, 2020, and semi-annually thereafter on the 1<sup>st</sup> day of January and July in each year, at the respective rates, and mature in principal amounts as stated in the Resolution. The School Corporation further agrees to provide audited financial statements to the Purchaser within 270 days of the fiscal year end throughout the term of the Bonds.

4. The Resolution approves the form of Bond Purchase Agreement and is incorporated herein by reference. The parties agree to abide by the terms and provisions of the Resolution.

5. The Purchaser and the School Corporation represent and agree that no financial advisory relationship as defined by Rule G-23 of the Municipal Securities Rulemaking Board has existed between them with respect to the Purchase Agreement or presently exists between them with respect to other similar matters and the Purchaser is not an employee or an agent of the School Corporation. The Purchaser has not and will not pay any commission, compensation or fee to any person or entity in connection with its purchase of the Bonds.

6. The Purchaser is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (the "Act") or an "accredited investor" as that term is defined in paragraph (a) of Rule 501 under the Act.

7. The Purchaser understands that there has not been prepared or provided any offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the School Corporation, the Bonds, or with respect to the Project and the School Corporation. In due diligence, the Purchaser sought such advice as it has deemed necessary and has made its own inquiry and analysis with respect to the School Corporation, the Bonds and the security therefor, the Project (as defined in the Resolution), and payment of the Bonds.

8. The Purchaser is not aware of, and is not purchasing the Bonds pursuant to, any form of general solicitation or advertising with respect to the Bonds.



9. The Purchaser and its affiliates have assets with a net worth of at least \$5,000,000 as of the date of purchase of the Bonds.

10. The Purchaser has independently evaluated the factors associated with its decision to purchase. The Purchaser acknowledges that it has been given full and complete access to and has been furnished with all information including financial statements and other financial information which is adequate for a reasonable purchaser in making investment decisions, and it has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the School Corporation, the Project and the Bonds, so that as a reasonable purchaser, it has been able to make its decision to purchase the Bonds. The Purchaser has been furnished with and has examined the Bonds, the Resolution, and other documents, certificates and the legal opinions delivered in connection with the issuance of the Bonds.

11. The Purchaser is aware that no document other than the Preliminary Loan Participant Package dated as of September 29, 2019, providing information relating to the Bonds has been prepared specifically in relation to the issuance of the Bonds. The Purchaser has been provided with, or given access to, all financial and other information and all documents it has requested of the School Corporation relating to the purchase of Bonds.

12. The Purchaser hereby certifies that it is the sole holder of the outstanding \$4,680,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2016, dated June 13, 2016, issued by the Shenandoah Community School District (the "Outstanding Obligations"). As such holder, the Purchaser hereby consents to the issuance by the Issuer of the Bonds and waives any requirement in the resolution authorizing the Outstanding Obligations that would require the Issuer to obtain a "parity certificate" from an independent auditor as to the sufficiency of the net revenues securing the payment of the Outstanding Obligations and the Bonds.

13. The Purchaser acknowledges that the Bonds are issued without a Reserve Fund. Pursuant to the Resolution, if a Reserve Fund is established for Additional Bonds secured by a pledge of School Infrastructure Tax Revenues, such reserve fund shall secure only the Additional Bonds, and shall not secure the Bonds.

14. The Purchaser understands that the Bonds (a) are not being registered under the Securities Act of 1933 and are not being registered or otherwise qualified for sale under the laws of Iowa or the "Blue Sky" laws and regulations of any other state, (b) will not be listed on any stock or other securities exchange, (c) will carry no rating from any rating service, and (d) will not be readily marketable. Purchaser agrees not to offer, sell or transfer the Bonds or make any change in registration of any of the Bonds without having first determined that the sale or transaction which necessitates or prompts the transfer to change of registration may be made without violating the Iowa Uniform Securities Act or any other applicable law, rule or regulation; or without making at its own expense such disclosure as may be required by state or federal law. The Purchaser agrees to indemnify and hold harmless the School Corporation from any and all liability and expense, including attorney's fees, for its failure to make such disclosure.

15. The Purchaser is acquiring the Bonds for its own loan portfolio and not with a view to resale, relend, or other distribution thereof and does not presently intend to divide the Bonds or

to resell or to otherwise dispose of all or any portion of the Bonds. The purchaser acknowledges that if any of the Bonds are transferred or sold to another purchaser, an investment or purchaser letter substantially similar to the form attached to, and incorporated by reference, this Purchase Agreement shall be executed by such transferee or purchaser. The Purchaser understands that it may need to bear the risks of this investment for an indefinite period of time, since any sale prior to maturity may not be possible.

16. The Purchaser is sufficiently knowledgeable and experienced in financial and business matters, including the purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the loan represented by the purchase of the Bonds, and it is capable of and has made its own investigation of the School Corporation with its decision to purchase the Bonds.

17. The Purchaser understands that the School Corporation and Bond Counsel will rely upon the accuracy and truthfulness of the representations and warranties contained herein and hereby consents to such reliance.

18. The Purchaser has duly authorized, by all necessary action, the purchase of the Bonds and the execution and delivery of this certificate and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bonds.

19. All closing costs shall be the responsibility of the School Corporation. The School Corporation shall pay the legal fees of the Purchaser in the amount of \$5,000 upon submission of said invoice by their legal counsel to the School Corporation.

20. Lender Agreement to EMMA Posting Public Records. The Shenandoah Community School District may be subject, now or in the future, to certain continuing disclosure obligations imposed by S.E.C. Rule 15c2-12 (the "Rule"), as may be amended from time to time. To the extent the Shenandoah Community School District determines the Rule or other applicable law requires disclosure of this agreement, the term sheet, or any other documents with regard to this transaction on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system or elsewhere, Purchaser hereby acknowledges such documents as public records and consents to said disclosure.

.....

IN WITNESS WHEREOF, we affix our signatures as of the 11<sup>th</sup> day of November, 2019.

SHENANDOAH COMMUNITY SCHOOL  
DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary of the Board of Directors

.....

BRANCH BANKING AND TRUST  
COMPANY, A NORTH CAROLINA  
BANKING CORPORATION (Purchaser)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

(Signature Page to Bond Purchase Agreement  
Re: Shenandoah Community School District  
\$5,679,000 School Infrastructure Sales, Services and  
Use Tax Revenue Bonds, Series 2019)

Exhibit A

INVESTMENT LETTER

RE: School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019 (the "Bonds") of the Shenandoah Community School District (the "School Corporation")

Ladies and Gentlemen:

The undersigned \_\_\_\_\_ (the "Holder"), has purchased \$ \_\_\_\_\_ principal amount of the Bonds from \_\_\_\_\_ (the "Original Purchaser"). In connection with such purchase, the School Corporation requires that the Holder make certain representations as to the Holder's willingness to accept the risks of investing in the Bonds, the Holder's investigation of such risks and other matters. Accordingly, the Holder represents and warrants to the School Corporation and the other addressees hereof as follows:

A. The Holder has been provided with a copy of the Purchase Agreement between the School Corporation and Original Purchaser a copy of which is attached to this Investment Letter and hereby incorporated by reference.

B. The Holder specifically acknowledges paragraphs 3 through 20 of the Purchase Agreement and agrees that all of these paragraphs shall apply to the Holder in addition to the Original Purchaser.

The Holder acknowledges that if in the future the Bonds are transferred or sold to another investor, a new Investment Letter shall be executed by the transferee.

C. All representations of the Holder contained herein shall survive the sale and delivery of the Bonds to the Holder as representations of fact existing as of the date of execution and delivery of this Investment Letter.

D. Notwithstanding anything to the contrary herein, the Holder waives any requirement of due diligence and investigation or inquiry on the part of any of the addressees to this Investment Letter.

The above representations are provided solely for the benefit of the addressees of this Investment Letter and may not be relied upon by or furnished to any other person without our prior written consent.

(HOLDER)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

[Bond: If the Holder is a corporation or other  
business entity, the signatory must be Chief  
Financial Officer or other executive officer]

By: \_\_\_\_\_

Its: \_\_\_\_\_

01643986-1\18883-022

Form **8038-G**

**Information Return for Tax-Exempt Governmental Bonds**

(Rev. September 2018)

► Under Internal Revenue Code section 149(e)

► See separate instructions.

OMB No. 1545-0720

Department of the Treasury  
Internal Revenue Service

Caution: If the issue price is under \$100,000, use Form 8038-GC.  
► Go to [www.irs.gov/F8038G](http://www.irs.gov/F8038G) for instructions and the latest information.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>Shenandoah Community School District</b>		2 Issuer's employer identification number (EIN) <b>42-6038087</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) Room/suite <b>304 West Nishna Road</b>		5 Report number (For IRS Use Only) <b>3</b>	
6 City, town, or post office, state, and ZIP code <b>Shenandoah, IA 51601</b>		7 Date of issue <b>November 25, 2019</b>	
8 Name of issue <b>\$5,679,000 School Infrastructure Sales, Services and Use Tax Revenue Bonds, Series 2019</b>		9 CUSIP number <b>N/A</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>Sherri Ruzek, Treasurer</b>		10b Telephone number of officer or other employee shown on 10a <b>712-246-1581</b>	

**Part II Type of Issue (enter the issue price).** See the instructions and attach schedule.

11	Education	11	5,679,000	00
12	Health and hospital	12		
13	Transportation	13		
14	Public safety	14		
15	Environment (including sewage bonds)	15		
16	Housing	16		
17	Utilities	17		
18	Other. Describe ►	18		
19a	If bonds are TANs or RANs, check only box 19a			
19b	If bonds are BANs, check only box 19b			
20	If bonds are in the form of a lease or installment sale, check box			

**Part III Description of Bonds.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	01/01/2031	\$ 5,679,000.00	\$ 5,679,000.00	6.545 years	2.1298 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22	Proceeds used for accrued interest	22	-0-	00
23	Issue price of entire issue (enter amount from line 21, column (b))	23	5,679,000	00
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	91,127	00
25	Proceeds used for credit enhancement	25	-0-	
26	Proceeds allocated to reasonably required reserve or replacement fund	26	-0-	
27	Proceeds used to refund prior tax-exempt bonds. Complete Part V	27	-0-	
28	Proceeds used to refund prior taxable bonds. Complete Part V	28	-0-	
29	Total (add lines 24 through 28)	29	91,127	00
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	5,587,873	00

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	N/A	years
32	Enter the remaining weighted average maturity of the taxable bonds to be refunded	N/A	years
33	Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	N/A	
34	Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	N/A	

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	<b>35</b>	-0-
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions	<b>36a</b>	-0-
<b>b</b>	Enter the final maturity date of the GIC ▶ (MM/DD/YYYY)		
<b>c</b>	Enter the name of the GIC provider ▶		
<b>37</b>	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	<b>37</b>	-0-
<b>38a</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:		
<b>b</b>	Enter the date of the master pool bond ▶ (MM/DD/YYYY)		
<b>c</b>	Enter the EIN of the issuer of the master pool bond ▶		
<b>d</b>	Enter the name of the issuer of the master pool bond ▶		
<b>39</b>	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box		<input checked="" type="checkbox"/>
<b>40</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box		<input type="checkbox"/>
<b>41a</b>	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:		
<b>b</b>	Name of hedge provider ▶		
<b>c</b>	Type of hedge ▶		
<b>d</b>	Term of hedge ▶		
<b>42</b>	If the issuer has superintegrated the hedge, check box		<input type="checkbox"/>
<b>43</b>	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box		<input checked="" type="checkbox"/>
<b>44</b>	If the issuer has established written procedures to monitor the requirements of section 148, check box		<input checked="" type="checkbox"/>
<b>45a</b>	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement		N/A
<b>b</b>	Enter the date the official intent was adopted ▶ (MM/DD/YYYY)		I/A

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the preparation of this return, to the person that I have authorized above.

**Signature of issuer's authorized representative** \_\_\_\_\_ **Date** November 23, 2019

**Jherri Ruzek, Treasurer**  
Type or print name and title

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	<b>Ronald L. Peeler</b>		<b>11/25/2019</b>		<b>P01610493</b>
	Firm's name ▶ <b>Ahlers &amp; Cooney, P.C</b>	Firm's EIN ▶ <b>42-1323559</b>		Phone no. <b>(515) 243-7611</b>	
Firm's address ▶ <b>100 Court Avenue, Suite 600, Des Moines, IA 50309</b>					



October 31, 2019

Dr. Kerri Nelson, Superintendent  
Shenandoah Community School District  
304 W. Nishna Road  
Shenandoah, Iowa 51601

**RE: Commissioning Proposals**

On October 14, 2019 Carl A. Nelson & Company sent out a Request for Proposal (RFP) to six (6) qualified commissioning firms. On October 23, Carl A. Nelson received three (3) proposals. The RFP included commissioning for both Phase 1 and Phase 2.

We included in the 25% Schematic Budgets of \$80,000 for Phase I and \$51,000 for Phase 2 for a total of \$131,000 to complete the commissioning. Below are a summary of the proposals received.

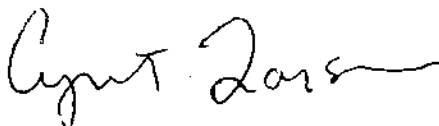
	Company	Phase 1	Phase 2	Reimbursables Phase 1	Reimbursables Phase 2	Total	Difference Compared to Budget
1	IMEG	\$47,700	\$46,000	\$0	\$0	\$93,700	-\$36,300
2	Shive Hattery	\$80,000	\$50,000	\$8,500	\$7,000	\$145,500	+15,500
3	Systems Management and Balancing	\$122,000	\$70,000	Plus Reimbursables	Plus Reimbursables	\$192,000	+62,000

While the low price proposal, IMEG, is significantly below our budget, their proposal appears to be complete as specified in the RFP and indicates an understanding of what will be required to successfully complete this project.

IMEG provided four references, who we contacted. Therefore, we recommend that IMEG be hired. With your approval Carl A. Nelson & Company will prepare a contract between you and IMEG which we will administer on your behalf. The contract will initially be for Phase 1 work with an option to add Phase 2 at a later date.

If you have any questions, please don't hesitate to ask.

Sincerely,



Cindy Larson, Project Manager

# AIA<sup>®</sup> Document A132<sup>™</sup> - 2009

## Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the «    » day of «    » in the year «2020»  
(In words, indicate day, month and year.)

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

«Shenandoah Community School District»«  »  
«304 West Nishna Road  
Shenandoah, IA 51601»  
«Phone: (712)246-1581  »  
«Fax: (712)246-3722  »

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

«  »«  »  
«  »  
«  »  
«  »

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

«Shenandoah Community School District»  
«Shenandoah High School Renovations»  
«Shenandoah, IA 51601»  
»

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

«Carl A. Nelson & Company»«  »  
«1815 Des Moines Avenue  »  
«Burlington, IA 52601»  
«  »

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

«DLR Group»«  »  
«1430 Locus Street, Suite 200  »  
«Des Moines, IA 50309  »  
«  »

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A232<sup>™</sup>-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132<sup>™</sup>-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132<sup>™</sup>-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232<sup>™</sup>-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

Bid Package No. \_\_\_\_\_

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. *(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

«»

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows:

« »

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than «» ( «» ) days from the date of commencement, 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.)

«See Construction Project Schedule in the Project Manual.»

Portion of the Work	Substantial Completion Date
« »	

, subject to adjustments of this Contract Time as provided in the Contract 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.)

« »

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be one of the following:  
(Check the appropriate box.)

- Stipulated Sum, in accordance with Section 4.2 below
- Cost of the Work plus the Contractor’s Fee without a Guaranteed Maximum Price, in accordance with Section 4.3 below
- Cost of the Work plus the Contractor’s Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below. Based on the selection above, also complete either Section 5.1.4, 5.1.5 or 5.1.6 below.)

#### § 4.2 Stipulated Sum

§ 4.2.1 The Stipulated Sum shall be « » (\$ « »), subject to additions and deletions as provided in the Contract Documents.

§ 4.2.2 The Stipulated Sum is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

« \_\_\_\_\_ »

§ 4.2.3 Unit prices, if any:  
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

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

§ 4.2.4 Allowances included in the Stipulated Sum, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
«As described in Spec Section 01 1000 “Summary of Work”»	

~~§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~

~~§ 4.3.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.~~

~~§ 4.3.2 The Contractor's Fee:~~

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

~~↔~~

~~§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~↔~~

~~§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~↔~~

~~§ 4.3.5 Rental rates for Contractor owned equipment shall not exceed ~~↔~~ percent (~~↔~~%) of the standard rate paid at the place of the Project.~~

~~§ 4.3.6 Unit prices, if any:~~

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

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

~~↔~~

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the items in Section A.1 of Exhibit A, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~

~~§ 4.4.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.~~

~~§ 4.4.2 The Contractor's Fee:~~

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

~~↔~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~↔~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~↔~~

~~§ 4.4.5 Rental rates for Contractor owned equipment shall not exceed ~~↔~~ percent (~~↔~~%) of the standard rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~

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

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

~~↔~~

~~§ 4.4.7 Guaranteed Maximum Price~~

~~§ 4.4.7.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed « (\$ « » ), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~(Insert specific provisions if the Contractor is to participate in any savings.)~~

« »

~~§ 4.4.7.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:~~

« »

~~§ 4.4.7.3 Allowances included in the Guaranteed Maximum Price, if any:~~

~~(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)~~

Item

Allowance

« »

~~§ 4.4.7.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

« »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 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:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the «last» day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the «thirtieth» day of the «following» month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than «forty-fivethirty» ( «3045» ) days after the Construction Manager receives the Application for Payment.

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

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.4.3 Subject to the provisions of the Contract 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 total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «five» percent («5» %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;
- 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 «five» percent («5» %);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 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 «~~N/A~~one hundred -» percent («~~N/A~~ 100 %») of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work, retainage applicable to such work and unsettled claims or as otherwise required under Iowa Code Chapters 26 and 573 and unsettled claims; and
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

§ 5.1.4.5 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 5.1.4.3.1 and 5.1.4.3.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

« Retainage to be reduced in accordance with the laws of the State of Iowa, as applicable »

§ 5.1.4.6 Except with the Owner's prior approval, the Contractor shall not make advance payment to suppliers for materials or equipment which have not been delivered and stored at the site.

~~§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit A, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

~~§ 5.1.5.2 Applications for Payment show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

- ~~1 Take the Cost of the Work as described in Exhibit A, Determination of the Cost of the Work;~~
- ~~2 Add the Contractor's Fee, less retainage of «■» percent («■» %). The Contractor's Fee shall be computed upon the Cost of the Work described in that Section at the rate stated in that Section; or if the Contractor's Fee is stated as a fixed sum, an amount which 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;~~
- ~~3 Subtract retainage of «■» percent («■» %) from that portion of the Work that the Contractor self-performs;~~
- ~~4 Subtract the aggregate of previous payments made by the Owner;~~

- ~~.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Article 5 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or withdrawn a Certificate for Payment as provided in Section 9.5 of AIA Document A232™ 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.~~

~~§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

#### ~~§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price~~

~~§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

~~§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor 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.~~

~~§ 5.1.6.4 Subject to other provisions of the Contract 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 7.3.10 of AIA Document A232 2009;~~
- ~~.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 Contractor's Fee, less retainage of  percent ( %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.4.2 or, if the Contractor'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  $\langle \rangle$  percent ( $\langle \rangle$  %) from that portion of the Work that the Contractor self-performs;~~
  - ~~5. Subtract the aggregate of previous payments made by the Owner;~~
  - ~~6. Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 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 Construction Manager or Architect have withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A232-2009.~~

~~§ 5.1.6.5 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager or Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~§ 5.1.6.7 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- ~~1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2009, and to satisfy other requirements, if any, which extend beyond final payment; and~~
- ~~2. a Final Certificate for Payment has been issued by the Architect (the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and~~
- ~~3. a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:~~

~~Final Payment shall be made in accordance with 9.10.2 of the AIA Document A232-2009 General Conditions of the Contract for Construction.~~

~~§ 5.2.2 The Owner's Final Payment to the Contractor shall be made no earlier than 31 days following approval and final acceptance of the Project by the Board of Directors (Owner) upon receipt and review of the Construction Manager's and/or Architect's Certificate and Recommendation for Final Payment.~~

~~Final Payment may be contingent upon receipt of all lien waivers/Chapter 573 claim releases and other closeout documents and shall be subject to the conditions of and shall be paid in accordance with the provisions of Iowa Code Chapter 573 and Iowa Code Chapter 26.~~

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A232-2009, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

« Construction Manager »

« »

« »

« »

## § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A232–2009, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

[  ] Arbitration pursuant to Section 15.4 of AIA Document A232–2009.

[  ] Litigation in a court of competent jurisdiction.

[  ] Other: *(Specify)*

«»

## ARTICLE 7 TERMINATION OR SUSPENSION

### § 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009.

~~§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~

~~§ 7.2.1 Subject to the provisions of Section 7.2.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.~~

~~§ 7.2.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A232–2009; however, the Owner shall then only pay the Contractor an amount calculated as follows:~~

- ~~1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Sections 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~
- ~~3 Subtract the aggregate of previous payments made by the Owner.~~

~~§ 7.2.3 If the Owner terminates the Contract for cause when the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, and as provided in Article 14 of AIA Document A232–2009, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A232–2009 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.2.~~

~~§ 7.2.4 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.~~

~~§ 7.2.5 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232–~~

~~2009, except that the term 'profit' shall be understood to mean the Contractor's Fee as described in Sections 4.3.2 and 4.4.2 of this Agreement.~~

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2009 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate equal to the rate specified by rule pursuant to Iowa Code Section 74A.2 or Iowa Code Section 573.14, whichever is less rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

~~« Interest shall be paid in accordance with Chapter 573 in the Code of Iowa. » % « »~~

§ 8.3 The Owner's representative:  
(Name, address and other information)

~~« Dr. Kerri Nelson, Superintendent—  
« Shenandoah Community School District—  
« 304 West Nishna Road  
« Shenandoah, IA 51601 »~~

~~« »  
« »~~

§ 8.4 The Contractor's representative:  
(Name, address and other information)

~~« »  
« »  
« »  
« »  
« »  
« »~~

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

~~« To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, its agents, representatives, and employees of any of them (Indemnitees) from and against any and all claims, damages, causes of action, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from or in connection with the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnity. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist, as to any party or person described in Contract Documents.~~

In the event the Owner should prevail in any legal action arising out of the performance or non-performance of this Agreement, the Contractor shall pay, in addition to any damages, all expenses of such action including reasonable attorney's fees, all expert witness fees, costs, and litigation expenses incurred by the Owner, including those incurred on appeal. The term "legal action" shall be deemed to include any arbitration, administrative proceedings, and all actions at law or in equity, including appeals.

The Contractor shall not be owned, operated, or managed by a registered sex offender who has been convicted of a sex offense against a minor in accordance with Iowa Code 692A.113. In addition, the Contractor shall not permit an employee, Subcontractor (Company) owned, operated, or managed by, or Subcontractor employee who is a registered sex offender convicted of a sex offense against a minor on real property of the Owner's schools in accordance with Iowa Code 692A.113. The Contractor shall further acknowledge and certify, by execution of this Agreement, that the services provided under this Contract comply with Iowa Code 692A.113. »

»

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition.

§ 9.1.2 The General Conditions are AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<< >>			

§ 9.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

<<EXHIBIT A – Specifications: Project Manual – Table of Contents dated \_\_\_\_\_, 2020>>

Section	Title	Date	Pages
<< >>			

§ 9.1.5 The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

<< >>

Number	Title	Date
<<—>>		

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
<< —>>		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents are:

- .1 AIA Document A132™-2009, Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

«»

- .3 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

«»

- .4 Other documents, if any, listed below:

*(List here any additional documents which are intended to form part of the Contract Documents. AIA Document A232-2009 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

« Notice to Bidders  
Instruction to Bidders  
Specifications  
Drawings  
General Conditions (as modified)  
Supplementary Conditions (if applicable)  
Certificate of Insurance  
Performance of Bond  
Payment Bond  
 »

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A232-2009.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A232-2009.)*

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
<u>Performance Bond</u>	<u>100% of contract</u>
<u>Payment Bond</u>	<u>100% of contract</u>
<u>See Section 11.1.2 of A232 General Conditions for Insurance Requirements</u>	

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

«Shenandoah Community School District»

OWNER (Signature)

« »« Board President»

(Printed name and title)

« »

CONTRACTOR (Signature)

« »« »

(Printed name and title)

01647463-1\18883-020

# AIA<sup>®</sup> Document A232™ - 2009

## General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

### for the following PROJECT:

(Name, and location or address)

[Shenandoah Community School District»](#)  
[«Shenandoah High School Renovations»](#)  
[«Shenandoah, IA 51601](#)

### THE CONSTRUCTION MANAGER:

(Name, legal status and address)

[Carl A. Nelson & Company](#)  
[1815 Des Moines Avenue](#)  
[«Burlington, IA 52601](#)

### THE OWNER:

(Name, legal status and address)

[Shenandoah Community School District](#)  
[304 West Nishna Road](#)  
[Shenandoah, IA 51601](#)

### THE ARCHITECT:

(Name, legal status and address)

[«DLR Group](#)  
[1430 Locust Street, Suite 200](#)  
[Des Moines, IA 50309](#)

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT AND CONSTRUCTION MANAGER
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A132™-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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User Notes: (3B9ADA1D)

- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

## INDEX

(Topics and numbers in bold are section headings.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### **Access to Work**

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2.1, 3.2.2, 3.3.2, 3.12.8, 3.18, 8.3.1, 9.5.1, 10.1,

10.2.5, 13.4.2, 13.7

Addenda

1.1.1, 3.11, 4.2.14

Additional Costs, Claims for

3.2.4, 3.7.4, 3.7.5, 6.1.1, 7.3, 9.10.3, 9.10.4, 10.3,

10.4, 15.1.4

Additional Inspections and Testing

4.2.8, 12.2.1, 13.5

Additional Insured

11.1.4

Additional Time, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3, 8.3, 10.3

### **Administration of the Contract**

3.10, **4.2**

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.19

### **Allowances**

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

### **Applications for Payment**

4.2.7, 4.2.15, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.7, 9.8.3,

9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4

Approvals

2.1.1, 2.2.2, 2.4, 3.1.4, 3.10.1, 3.10.2, 3.12.4 through

3.12.10, 3.13.2, 3.15.2, 4.2.9, 9.3.2, 13.4.2, 13.5

### **Arbitration**

8.3.1, 11.3.10, 13.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

Architect, Certificates for Payment

9.4

Architect, Definition of

4.1.1

Architect, Extent of Authority

5.2, 7.1.2, 7.3.7, 7.4, 9.3.1, 9.4, 9.5, 9.8.3, 9.8.4,

9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 15.1.3,

15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.8, 4.2.1, 4.2.2, 4.2.8, 4.2.13, 5.2.1, 9.6.4,

15.2

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 12.2.4, 13.5.2

Architect's Administration of the Contract

4.2, 9.4, 9.5, 15.2

Architect's Approvals

3.12.8

Architect's Authority to Reject Work

4.2.8, 12.1.2, 12.2.1

Architect's Copyright

1.5

Architect's Decisions

4.2.8, 7.3.9, 7.4, 8.1.3, 8.3.1, 9.2, 9.4, 9.5, 9.8.3, 9.9.2,

13.5.2, 14.2.2, 14.2.4, 15.2

Architect's Inspections

3.7.4, 4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 7.4, 9.4

Architect's Interpretations

4.2.8, 4.2.17, 4.2.18

Architect's On-Site Observations

4.2.2, 9.4, 9.5.1, 9.10.1, 12.1.1, 12.1.2, 13.5

Architect's Project Representative

4.2.16

Architect's Relationship with Contractor

1.1.2, 1.5, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4,

3.9.2, 3.9.3, 3.10, 3.11, 3.12.8, 3.16, 3.18, 4.2, 5.2,

6.2.2, 8.2, 11.3.7, 12.1, 13.5

Architect's Relationship with Construction Manager

1.1.2, 9.3 through 9.10, 10.3, 13.5.1, 10.3, 11.3.7,

13.4.2, 13.5.4

Architect's Relationship with Subcontractors

1.1.2, 4.2.8, 5.3, 9.6.3, 9.6.4

Architect's Representations

9.4, 9.5, 9.10.1

Architect's Site Visits

4.2.2, 9.4, 9.5.1, 9.8.3, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Other Contracts

6.1.1, 6.1.2

### **Award of Subcontracts and Other Contracts for**

**Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1,

15.3.2, 15.4.1

### **Boiler and Machinery Insurance**

**11.3.2**

## **BONDS, INSURANCE AND**

**11**

Bonds, Lien



7.3.7.4, 9.10.3  
 Bonds, Performance and Payment  
 7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4  
 Building Permit  
 2.2.2, 3.7.1  
**Capitalization**  
**1.3**  
 Certificate of Substantial Completion  
 9.8.3, 9.8.4, 9.8.5  
**Certificates for Payment**  
 4.2.2, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3,  
 15.1.3  
 Certificates of Inspection, Testing or Approval  
 13.5.4  
 Certificates of Insurance  
 9.3.2, 9.10.2, 11.1.3  
**Change Orders**  
 1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2, 3.11, 3.12.8, 4.2.12,  
 4.2.13, 4.2.14, 5.2.3, 7.1.1, 7.1.2, **7.2**, 7.3.2, 7.3.4,  
 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2,  
 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3  
 Change Orders, Definition of  
 7.2  
 Changes  
 7.1  
**CHANGES IN THE WORK**  
 2.2.1, 3.4.2, 3.11, 3.12.8, 4.2.13, 4.2.14, **7**, 8.3.1,  
 9.3.1.1  
**Claims**, Definition of  
**15.1.1**  
**CLAIMS AND DISPUTES**  
 1.1.8, 3.2.4, 3.7.5, 6.1.1, 7.3.9, 8.3.2, 9.3.3, 9.10.3,  
 9.10.4, 10.3.3, **15**, 15.4  
**Claims for Additional Cost**  
 3.2.4, 3.7.5, 6.1.1, 7.3.9, 9.10.3, 9.10.4, 10.3.2, 10.4,  
**15.1.4**  
**Claims for Additional Time**  
 3.2.4, 3.7.5, **7**, 8.3.2, 10.4, **15.1.5**  
 Concealed or Unknown Conditions, Claims for  
 3.7  
 Claims for Damages  
 3.2.4, 3.18, 6.1.1, 6.2.5, 8.3.2, 9.3.3, 9.5.1.2, 9.10.2,  
 9.10.5, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 15.1.6  
**Cleaning Up**  
**3.15**, 6.3  
 Commencement of Statutory Limitation Period  
 13.7  
 Commencement of the Work, Definition of  
 8.1.2  
 Communications, Owner to Architect  
 2.2.6  
 Communications, Owner to Construction Manager  
 2.2.6  
 Communications, Owner to Contractor  
 2.2.6  
**Communications Facilitating Contract Administration**  
 3.9.1, **4.2.6**

**COMPLETION, PAYMENTS AND**  
**9**  
**Completion, Substantial**  
 4.2.15, 8.1.1, 8.1.3, 8.2.3, 9.4.3.3, **9.8**, 9.9.1, 9.10.3,  
 12.2.1, 12.2.2, 13.7  
**Concealed or Unknown Conditions**  
**3.7.4**, 4.2.8, 8.3.1, 10.3  
 Conditions of the Contract  
 1.1.1  
**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS**  
 1.1.4, **6**  
 Construction Change Directive, Definition of  
 7.3.1  
**Construction Change Directives**  
 1.1.1, 3.4.2, 3.12.8, 4.2.12, 4.2.13, 7.1.1, 7.1.2, 7.1.3,  
**7.3**, 9.3.1.1  
 Construction Manager, Building Permits  
 2.2.2  
 Construction Manager, Communications through  
 4.2.6  
 Construction Manager, Construction Schedule  
 3.10.1, 3.10.3  
**CONSTRUCTION MANAGER**  
**4**  
 Construction Manager, Definition of  
 4.1.2  
 Construction Manager, Documents and Samples at the Site  
 3.11  
 Construction Manager, Extent of Authority  
 3.12.7, 3.12.8, 4.1.3, 4.2.1, 4.2.4, 4.2.5, 4.2.9, 7.1.2,  
 7.2, 7.3.1, 8.3, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 9.8.2, 9.8.3,  
 9.8.4, 9.9.1, 12.1, 12.2.1, 14.2.2, 14.2.4  
 Construction Manager, Limitations of Authority and Responsibility  
 4.2.5, 4.2.8, 13.4.2  
 Construction Manager, Submittals  
 4.2.9  
 Construction Manager's Additional Services and Expenses  
 12.2.1  
 Construction Manager's Administration of the Contract  
 4.2, 9.4, 9.5  
 Construction Manager's Approval  
 2.4, 3.10.1, 3.10.2  
 Construction Manager's Authority to Reject Work  
 4.2.8, 12.2.1  
 Construction Manager's Decisions  
 7.3.7, 7.3.9, 9.4.1, 9.5.1  
 Construction Manager's Inspections  
 4.2.8, 9.8.3, 9.9.2  
 Construction Manager's On-Site Observations  
 9.5.1  
 Construction Manager's Relationship with Architect

1.1.2, 4.2.1, 4.2.7, 4.2.8, 4.2.9, 4.2.13, 4.2.15, 4.2.16, 4.2.20, 9.2.1, 9.4.2, 9.5, 9.6.1, 9.6.3, 9.8.2, 9.8.3, 9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 11.1.3, 12.2.4, 13.5.1, 13.5.2, 13.5.4, 14.2.2, 14.2.4

Construction Manager's Relationship with Contractor  
3.2.2, 3.2.3, 3.3.1, 3.5, 3.10.1, 3.10.2, 3.10.3, 3.11, 3.12.5, 3.12.6, 3.12.7, 3.12.8, 3.12.9, 3.12.10, 3.13.2, 3.14.2, 3.15.2, 3.16, 3.17, 3.18.1, 4.2.4, 4.2.5, 4.2.6, 4.2.9, 4.2.14, 4.2.17, 4.2.20, 5.2, 6.2.1, 6.2.2, 7.1.2, 7.2, 7.3.5, 7.3.7, 7.3.10, 8.3.1, 9.2, 9.3.1, 9.4.1, 9.4.2, 9.7, 9.8.2, 9.8.3, 9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 10.1, 10.3, 11.3.7, 12.1, 13.5.1, 13.5.2, 13.5.3, 13.5.4  
Construction Manager's Relationship with Owner  
2.2.2, 4.2.1, 10.3.2

Construction Manager's Relationship with Other Contractors and Owner's Own Forces  
4.2.4

Construction Manager's Relationship with Subcontractors  
4.2.8, 5.3, 9.6.3, 9.6.4

Construction Manager's Site Visits  
9.5.1

Construction Schedules, Contractor's  
3.10, 3.12.1, 3.12.2, 6.1.2, 15.1.5.2

Contingent Assignment of Subcontracts  
5.4, 14.2.2.2

Continuing Contract Performance  
15.1.3

Contract, Definition of  
1.1.2

**CONTRACT, TERMINATION OR  
SUSPENSION OF THE**  
5.4.1.1, 11.3.9, 14

Contract Administration  
3.1.3, 4.2, 9.4, 9.5

Contract Award and Execution, Conditions Relating to  
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of  
1.1.1

Contract Performance During Arbitration  
15.1.3

Contract Sum

3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1.1, 12.3, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Time

3.7.4, 3.7.5, 4, 3.10.2, 5.2.3, 7.2.3, 7.3.1, 7.3.5, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of  
8.1.1

**CONTRACTOR**  
3

Contractor, Definition of  
3.1.1

**Contractor's Construction Schedules**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

**Contractor's Liability Insurance**

11.1

Contractor's Relationship with Other Contractors and Owner's Own Forces

3.12.5, 3.14.2, 4.2.6, 6, 11.3, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8, 14.2.1.2

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.2.2, 3.2.3, 3.2.4, 3.4.2, 3.5, 3.7.4, 3.10.1, 3.11, 3.12, 3.16, 3.18, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Relationship with the Construction Manager

1.1.2, 3.2.2, 3.2.3, 3.3.1, 3.5, 3.10.1, 3.10.2, 3.10.3, 3.11, 3.12.5, 3.12.7, 3.12.9, 3.12.10, 3.13.2, 3.14.2, 3.15.1, 3.16, 3.17, 3.18.1, 4.2.4, 4.2.5, 5.2, 6.2.1, 6.2.2, 7.1.2, 7.3.5, 7.3.7, 7.3.10, 8.3.1, 9.2, 9.3.1, 9.4.1, 9.4.2, 9.8.2, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 10.1, 10.2.6, 10.3, 11.3.7, 12.1, 13.5.1, 13.5.2, 13.5.3, 13.5.4

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10.2, 3.11, 3.12, 4.2.9, 9.2, 9.3, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 4.2.5, 4.2.7, 6.1, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2, 11.3.1.5

Coordination and Correlation

1.2, 3.2, 3.3.1, 3.10, 3.12.6, 6.1.2, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

**Correction of Work**

2.3, 2.4, 9.4.1, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

**Correlation and Intent of the Contract Documents**

## 1.2

### Costs

2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 7.3.9, 11.3.1.2, 11.3.1.3, 11.3.4, 11.3.9, 12.1, 12.2.1, 13.5, 14

### Cutting and Patching

#### 3.14, 6.2.5

Damage to Construction of Owner or Other Contractors

3.14.2, 6.2.4, 9.5.1.5, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.2, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 15.1.5

Date of Commencement of the Work, Definition of 8.1.2

Date of Substantial Completion, Definition of 8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.7, 4.2.8, 4.2.10, 4.2.11, 4.2.13, 4.2.15, 4.2.16, 4.2.17, 4.2.18, 4.2.19, 4.2.20, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5, 9.8.3, 9.8.4, 9.9.1, 10.1.2, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions of the Construction Manager

7.3.7, 7.3.8, 7.3.9, 15.1, 15.2

### Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3, 2.4, 3.5, 4.2.8, 6.2.5, 9.5.1, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 12.2.2

Definitions

1.1, 2.1.1, 3.1.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.1.2, 7.2, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

### Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Disputes

7.3.8, 7.3.9, 9.3, 15.1, 15.2

### DISPUTES, CLAIMS AND

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 15, 15.4

### Documents and Samples at the Site

#### 3.11

Drawings, Definition of

#### 1.1.5

### Drawings and Specifications, Ownership and Use

1.1.1, 1.5, 2.2.5, 3.11, 5.3

Duty to Review Contract Documents and Field

Conditions

3.2

Effective Date of Insurance

8.2.2, 11.1.2

## Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.1, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials and or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12.2, 3.12.3, 3.13.1, 3.15.1, 4.2.8, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.3, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5

### Failure of Payment

9.5.1.3, 9.7, 13.6, 14.1.1.3, 14.1.3, 14.2.1.2, 15.1.4

Faulty Work (See Defective or Nonconforming Work)

### Final Completion and Final Payment

4.2.1, 4.2.15, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 15.2.1

Financial Arrangements, Owner's

2.2.1

## GENERAL PROVISIONS

### 1

#### Governing Law

#### 13.1

Guarantees (See Warranty and Warranties)

#### Hazardous Materials

10.2.4, 10.3

Identification of Contract Documents

1.2.1

Identification of Subcontractors and Suppliers

5.2.1

#### Indemnification

3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

#### Information and Services Required of the Owner

2.1.2, 2.2, 4.2.6, 6.1.2, 6.2.5, 9.6.1, 9.6.4, 9.8, 9.9.1, 9.10.3, 10.3.2, 10.3.3, 11.2, 11.3.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.3, 15.1.2

#### Initial Decision

#### 15.2

Initial Decision Maker, Definition of

#### 1.1.8

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### Injury or Damage to Person or Property

3.18.1, 10.2.1, 10.2.2, 10.2.8, 10.3, 10.3.3, 10.4, 11.1.1

Inspections

3.1.3, 3.7.1, 4.2.2, 9.8.2, 9.9.2, 9.10.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.1.4, 3.3.3, 3.7.1, 4.2.4, 5.2.1, 7, 8.2.2, 12.1, 13.5.2

Instruments of Service, Definition of

1.1.7, 1.5, 1.6

## **Insurance**

6.1.1, 7.3.7, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

### **Insurance, Boiler and Machinery**

#### **11.3.2**

### **Insurance, Contractor's Liability**

#### **11.1**

Insurance, Effective Date of  
8.2.2, 11.1.2

### **Insurance, Loss of Use**

#### **11.3.3**

### **Insurance, Owner's Liability**

#### **11.2**

### **Insurance, Property**

10.2.5, **11.3**

Insurance, Stored Materials

9.3.2, 11.3.1

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1, 11.3.1.5

Insurance Companies, Settlement with  
11.3.10

Intent of the Contract Documents

**1.2**, 4.2.18, 4.2.19, 7.4

### **Interest**

9.7, **13.6**

### **Interpretation**

**1.4**, 4.2.8, 4.2.17, 4.2.18

Interpretations, Written

4.2.17, 4.2.18, 4.2.20

Joinder and Consolidation of Claims Required  
15.4.4

Judgment on Final Award

15.4.2

### **Labor and Materials, Equipment**

1.1.3, 1.1.6, 3.4, 3.8.2, 3.8.3, 3.12.2, 3.12.3, 3.12.6,  
3.12.10, 3.13.1, 3.15.1, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
9.5.1.3, 9.6, 9.10.2, 10.2.1.2, 11.3.1, 14.2.1, 14.2.2

Labor Disputes

8.3.1

Laws and Regulations

3.2.3, 3.2.4, 3.7, 3.13.1, 10.2.2, 10.2.3, 13.5.1, 14.2.1

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitation on Consolidation or Joinder

15.4.4

Limitations, Statutes of

15.4.1

Limitations of Authority

3.12.4, 4.1.3, 4.2.16

Limitations of Liability

9.6.7, 11.1.1, 12.2

Limitations of Time

3.10.1, 4.2.17, 4.2.20, 8.2.1, 9.3.3, 9.6.1, 9.8.4, 9.10.2,  
10.2, 11.1.3, 12.1.1, 12.2.2.2, 12.2.5, 13.7, 14.1.1,  
15.2.6.1

### **Loss of Use Insurance**

#### **11.3.3**

### **Material Suppliers**

1.5.1, 1.5.2, 3.12, 4.2.6, 4.2.8, 9.3.1, 9.3.1.2, 9.3.3,  
9.5.3, 9.6.4, 9.6.5, 9.6.7, 9.10.5, 11.3.1

### **Materials, Hazardous**

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 1.5.2, 3.4, 3.5, 3.8.2, 3.8.3, 3.12.2,  
3.12.3, 3.12.6, 3.12.10, 3.13.1, 5.2.1, 6.2.1, 9.3.1,  
9.3.2, 9.3.3, 9.5.1, 9.5.3, 9.6.4, 9.6.5, 9.6.7, 9.10.2,  
9.10.5, 10.2.1, 10.2.4, 10.3

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.5, 4.2.11

Mechanic's Lien

2.1.2, 15.2.8

### **Mediation**

8.3.1, 10.3.5, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1

### **Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.13, 7.1, **7.4**

## **MISCELLANEOUS PROVISIONS**

### **13**

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.3, 4.2.14, 5.2.3, 7, 11.3.1

### **Mutual Responsibility**

#### **6.2**

### **Nonconforming Work, Acceptance of**

9.4.3, 9.8.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.3, 2.4, 3.2.3, 3.7.3, 9.4.3.3, 9.8.2, 9.8.3, 9.9.1,

11.1.1, 12.2.2.1, 12.2.3, 12.2.4, 12.2.5

Notice

1.5, 2.1.2, 2.2.1, 2.4, 3.2.4, 3.3.1, 3.7.1, 3.7.2, 3.7.5,

3.9.2, 3.12.9, 5.2.1, 6.3, 9.4.1, 9.7, 9.10.1, 9.10.2,

10.2.2, 10.2.6, 10.2.8, 10.3.2, 11.3.6, 12.2.2.1, 13.3,

13.5.1, 13.5.2, 14.1.2, 14.2.2, 14.4.2, 15.1.2, 15.1.4,

15.1.5.1, 15.2, 15.4.1

### **Notice of Claims**

3.7.2, 10.2.8, **15.1.2**, 15.4.1

Notice of Testing and Inspections

13.5.1, 13.5.2

Notices, Permits, Fees and

3.7, 7.3.7, 10.2.2

Observations, On-Site

3.2.1, 9.5.1, 12.1.1

Occupancy

2.2.2, 9.6.6, 9.9, 11.3.1.5

On-Site Inspections

4.2.2, 9.10.1, 9.4.4, 9.5.1

Orders, Written

4.2.7, 4.2.18, 4.2.20

Other Contracts and Contractors

1.1.4, 3.14.2, 4.2.9, 6, 11.3.7, 12.1.2

## **OWNER**

### **2**

Owner, Definition of

2.1.1  
**Owner, Information and Services Required of the**  
2.1.2, **2.2**, 4.2, 6.1.2, 6.1.3, 6.2.5, 9.3.2, 9.6.1, 9.6.4,  
9.9.2, 9.10.2, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1,  
14.1.3, 15.1.3  
Owner's Authority  
1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.12.10, 3.14.2, 4.1.2, 4.1.3,  
4.2.8, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2, 7.3.1,  
8.2.2, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2,  
11.3.3, 11.3.10, 12.2.2.1, 12.3, 13.5.2, 14.2, 14.3.1,  
14.4, 15.2.7  
Owner's Financial Capability  
2.2.1, 13.2.2, 14.1.1  
**Owner's Liability Insurance**  
**11.2**  
Owner's Relationship with Subcontractors  
1.1.2, 5.2.1, 5.3, 5.4.1, 9.6.4, 9.10.2, 14.2.2  
**Owner's Right to Carry Out the Work**  
**2.4**, 12.2.4, 14.2.2  
**Owner's Right to Clean Up**  
**6.3**  
**Owner's Right to Perform Construction with Own**  
**Forces and to Award Other Contracts**  
**6.1**  
**Owner's Right to Stop the Work**  
**2.3**  
Owner's Right to Suspend the Work  
14.3  
Owner's Right to Terminate the Contract  
14.2  
**Ownership and Use of Drawings, Specifications**  
**and Other Instruments of Service**  
1.1.1, 1.1.5, **1.5**, 1.6, 3.11, 3.12.10, 3.17, 4.2.14,  
4.2.18, 4.2.20  
**Partial Occupancy or Use**  
**9.9**, 11.3.1.5  
**Patching, Cutting and**  
**3.14**, 6.2.5  
Patents and Copyrights, Royalties  
**3.17**  
**Payment, Applications for**  
4.2.1, 4.2.7, 4.2.15, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.7, 9.10.1,  
9.10.3, 9.10.5, 11.1.3  
**Payment, Certificates for**  
4.2.15, 7.3.9, 9.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 15.1.3  
**Payment, Failure of**  
9.4.1, 9.5, **9.7**, 14.1.1.3  
Payment, Final  
4.2.1, 9.8.2, **9.10**, 11.1.2, 11.3.1, 11.3.5, 12.3, 15.2.1  
**Payment Bond, Performance Bond and**  
5.4.1, 7.3.7, 9.6.7, 9.10.2, 9.10.3, 11, **11.4**  
**Payments, Progress**  
9.3.1, 9.4.2, **9.6**  
**PAYMENTS AND COMPLETION**  
**9**, 14  
Payments to Subcontractors

5.4.2, 9.3, 9.5.1.3, 9.5.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7,  
9.10.5, 14.2.1.2  
PCB  
10.3.1  
**Performance Bond and Payment Bond**  
5.4.1, 7.3.7, 9.6.7, 9.10.2, 9.10.3, 11, **11.4**  
**Permits, Fees, Notices and Compliance with Laws**  
2.2.2, **3.7**, 7.3.7.4, 10.2.2  
**PERSONS AND PROPERTY, PROTECTION OF**  
**10**  
Polychlorinated Biphenyl  
10.3.1  
Product Data, Definition of  
3.12.2  
**Product Data and Samples, Shop Drawings**  
3.11, **3.12**, 4.2.9, 4.2.10, 4.2.14  
**Progress and Completion**  
**8.2**, 9.3.1, 9.4.2, 9.6, 9.8, 9.10, 14.2.4, 15.1.6  
**Progress Payments**  
9.3.1, 9.4.2, **9.6**  
**Project**, Definition of  
**1.1.4**  
Project Representatives  
4.2.16  
**Property Insurance**  
10.2.5, **11.3**  
Project Schedule  
3.10.1, 3.10.3, 3.10.4, 4.2.2, 4.2.3, 4.2.4  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
Regulations and Laws  
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,  
14.1.1, 14.2.1, 15.2.8, 15.4  
Rejection of Work  
3.5, 4.2.8, 12.2.1  
Releases of and Waivers of and of Liens  
9.10.2  
Representations  
1.3, 2.2.1, 3.5, 3.12, 6.2.2, 8.2.1, 9.3.3, 9.4.3, 9.5.1,  
9.8.2, 9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1,  
5.1.2, 13.2.1  
Requests for Information  
4.2.20  
Resolution of Claims and Disputes  
15  
Responsibility for Those Performing the Work  
3.3.2, 3.7.3, 3.12.8, 3.18, 4.2.2, 4.2.5, 4.2.8, 5.3, 6.1.2,  
6.2, 6.3, 9.5.1, 9.8.2, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
1.2.2, **3.2**, 3.7.3, 3.12.7  
Review of Contractor's Submittals by Owner,  
Construction Manager and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 5.2, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and Samples  
by Contractor  
3.12.5

#### **Rights and Remedies**

1.1.2, 2.3, 2.4, 3.7.4, 3.15.2, 4.2.8, 5.3, 5.4, 6.1, 6.3,  
7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2,  
12.2.4, **13.4**, 14, 15.4

#### **Royalties, Patents and Copyrights**

##### **3.17**

Rules and Notices for Arbitration  
15.4

#### **Safety of Persons and Property**

**10.2**, 10.3, 10.4

#### **Safety Precautions and Programs**

3.3.1, 3.12, 4.2.5, 5.3, **10.1**, 10.2, 10.3, 10.4

Samples, Definition of

3.12.3

#### **Samples, Shop Drawings, Product Data and**

3.11, **3.12**, 4.2.9, 4.2.10

#### **Samples at the Site, Documents and**

##### **3.11**

#### **Schedule of Values**

**9.2**, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.2, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.6, 4.2.11, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

#### **Shop Drawings, Product Data and Samples**

3.11, **3.12**, 4.2.9, 4.2.10, 4.2.14

#### **Site, Use of**

**3.13**, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2.2, 4.2.3, 4.2.15, 9.4.3.3,

9.8.3, 9.9.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.15, 9.8.3, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.8, 12.2.1, 13.5

Specifications, Definition of

1.1.6

#### **Specifications**

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Staffing Plan

4.2.3

Statute of Limitations

12.2.5, 13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

#### **SUBCONTRACTORS**

##### **5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.5, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

#### **Subcontractual Relations**

**5.3**, 5.4, 9.3.1.2, 9.6.2, 9.6.3, 9.10, 10.2.1, 14.1, 14.2

Submittals

3.2.3, 3.10, 3.11, 3.12, 4.2.9, 4.2.10, 4.2.11, 5.2.1,

5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.9, 4.2.10

#### **Subrogation, Waivers of**

6.1.1, **11.3.7**

#### **Substantial Completion**

8.1.1, 8.1.3, 8.2.3, 9.4.3.3, **9.8**, 9.9.1, 9.10.3, 12.2.1,

12.2.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.4

Substitution of Construction Manager

4.1.4

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

#### **Successors and Assigns**

##### **13.2**

#### **Superintendent**

**3.9**, 10.2.6

#### **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.3, 4.2.5, 4.2.8, 4.2.9,

4.2.10, 4.2.11, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1,

9.4.3.3, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

1.1.7, 2.2.3

#### **Suspension by the Owner for Convenience**

##### **14.3**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

#### **Taxes**

**3.6**, 3.8.2.1, 7.3.7.4

#### **Termination by the Contractor**

**14.1**, 15.1.6

#### **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.6

#### **Termination by the Owner for Convenience**

##### **14.4**

Termination of the Contractor

14.2.2

#### **TERMINATION OR SUSPENSION OF THE**

## CONTRACT

### 14

#### Tests and Inspections

3.1.4, 3.3.3, 4.2.2, 4.2.6, 4.2.8, 9.4.3.3, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.5**

#### TIME

### 8

#### Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2, 7.3.1, 7.4, **8.3**, 9.5.1, 10.3.2, 14.3.2, 15.1.5, 15.2.5

#### Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.1, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.4.2, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4, 12.2, 13.5, 13.7, 14, 15

#### Time Limits on Claims

3.7.4, 10.2.8, **13.7**, 15.1.2

#### Title to Work

9.3.2, 9.3.3

#### Transmission of Data in Digital Form

### 1.6

## UNCOVERING AND CORRECTION OF WORK

### 12

#### Uncovering of Work

### 12.1

#### Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

#### Unit Prices

7.3.3.2, 7.3.4

#### Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

#### Use of Site

**3.13**, 6.1.1, 6.2.1

#### Values, Schedule of

### 9.2, 9.3.1

#### Waiver of Claims by the Architect

13.4.2

#### Waiver of Claims by the Construction Manager

13.4.2

#### Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

#### Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

#### Waiver of Consequential Damages

14.2.4, 15.1.6

#### Waiver of Liens

9.10.2, 9.10.4

#### Waivers of Subrogation

6.1.1, **11.3.7**

#### Warranty

**3.5**, 4.2.15, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2

#### Weather Delays

15.1.5.2

#### Work, Definition of

### 1.1.3

#### Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.3, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 10.3.2, 11.4.1, 13.2, 13.4.2, 15.4.4.2

#### Written Interpretations

4.2.17, 4.2.18

#### Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4, 9.5.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 13.5.2, 14, 15.4.1

#### Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding requirements. The Contract Documents also include the bidding requirements (advertisement or invitation to bid and Instruction to Bidders). Unless specifically enumerated in the agreements, the Contract Documents do not include sample forms and the Contractor's Bid.~~

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.2.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Construction Manager or Architect shall identify such unsigned Documents. No Contract shall be formed between the parties until all Contract Documents are executed by both parties.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 1.1.5 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.



## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results in proper operating condition.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In case of disputes over words and abbreviations which have well known or trade meanings, Architect's interpretation of terms shall be final. In case of Work or materials that are specified in the Contract Documents to be provided or supplied by more than one Contractor, each such Contractor shall be deemed to have included the Work and the Construction Manager shall determine who shall furnish Work and who shall submit a credit to Owner for the Work.

- .1 Products: Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components required for reuse.
- .2 Provide: To furnish or supply, plus install complete in place, tested and approved.
- .3 Furnish or Supply: To supply and deliver, unload, inspect for damage.
- .4 Install: To unpack, assemble, erect, apply, place, finish, cure, protect, clean, and ready for use.
- .5 The terms "approved," "required," and "as directed" refer to and indicate the work or materials that may be approved, required, or directed by the Architect acting as the Owner's representative.
- .6 The terms "shown," "indicated," "noted," "scheduled," and terms of similar import, refer to requirements contained in the Contract Documents.
- .7 The term "Trade Contractor" used in the Contract Documents shall mean Contractor.

§ 1.2.4 In the case of an inconsistency between Drawings and Specifications, or within either Document itself, not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.1 In the event of conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of propriety:

- .1 Modifications to the Contract;
- .2 The Contract;
- .3 Special Conditions; and
- .4 General Conditions.

## § 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in

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~~derogation of the Architect, or Architect's consultants' reserved rights. The Construction Documents, regardless of the media or format, as instruments of service, are the property of the Owner, whether the work for which they are made is executed or not. The Owner reserves the right to use the Construction Documents developed for the Project in such manner as the Owner may desire, subject to the provisions herein. The Owner shall not use or alter the Construction Documents without first notifying the Architect of its intended use or alteration of the Construction Documents. If Owner uses or alters the Construction Documents it shall be at the Owner's sole risk and without liability or legal exposure of any type or kind to the Architect. Nothing contained herein shall be construed as in derogation of the Architect's copyrights.~~

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

#### § 1.6 Transmission of Data in Digital Form

~~If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. The Architect may, with the concurrence of the Owner, furnish to the Contractor versions of Instruments of Service in electronic form. At Contractor's written request, copies of Architect's, or Architect's Consultant's, CAD files may be provided to the Contractor for the Contractor's exclusive use in connection with Project, subject to the following:~~

- ~~.1 Electronic copies of plan-type Drawings will be made available for each requested Drawing.~~
- ~~.2 Contractor making request shall not distribute files to other parties.~~
- ~~.3 Contractor making request shall sign copy of CAD/electronic file transfer request form and return to Architect, or Architect's Consultant, prior to receipt of CAD/electronic files. Architect, or Architect's Consultant will provide request form for Contractors signature.~~

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

### § 2.2 Information and Services Required of the Owner

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Intentionally Left Blank.~~

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

~~§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall compare information furnished by the Owner (including surveys and soil tests with observable physical conditions) and the Contract Documents and on the basis of such review, shall report to the Owner and Architect, in writing, any conflicts, errors or omissions. Contractor shall be responsible for any additional costs, delays and damages resulting from the Contractor's failure to immediately report any such errors, inconsistencies or omissions.~~

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional sets will be furnished by Owner at Contractor's expense in the amount of cost for reproduction, postage, and handling.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

#### § 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seventy-two hour period after receipt of written notice from the Owner, or such shorter times as may be reasonable under the circumstances to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and any attorney's fees made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3.1 The Contractor shall supervise and direct the Work in an excellent and workmanlike manner, complete the work and everything properly incidental thereto as stated in the Project Manual and Drawings or reasonably implied therefrom and otherwise in accordance with Contract Documents.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.5 The Work for this Project is being completed under multiple prime Agreements between Trade Contractors and the Owner. Specification section 01 10 00 Summary of Work identifies the specific requirements for each of the prime Trade Contractors.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor also represents that all Contract Documents for the Project have been examined; including those intended for work of trades not normally performed by the Contractor's own forces, and that it has become thoroughly familiar with all conditions which may pertain to or affect the Work under the Contract.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, including the ordering of any materials, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Any costs associated with Contract's failure to immediately notify the Architect and the Owner of items listed above in writing shall be borne by the Contractor.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require. The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and Referenced Standards and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

§ 3.2.4 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner, Construction Manager and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.5 The Contractor must promptly notify the Owner, Construction Manager and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner, Construction Manager and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.6 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner, Construction Manager and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

§ 3.2.47 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.8 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Construction Manager and/or Architect for evaluating and responding to the Contractor's requests for information where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum or extension of contract time.

§ 3.3.5 Manufacturer's printed instructions covering details of installation shall be followed where not in conflict with these Specifications. If there is a conflict, notify the Architect and obtain his approval before proceeding.

§ 3.3.6 Unless otherwise specified, all pieces of material shall be as large a stock size as is in conformity with standard good practice of the trade.

§ 3.3.5 The Owner reserves the right to retain ownership to any materials or equipment that are a part of the existing facility. If material or equipment is to be removed from the site, the Contractor shall detach such items and before

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removing from site, obtain permission from the Owner, or his designee, to do so. All items not retained by Owner shall be removed and disposed of in a proper manner by the Contractor.

§3.3.6 The Contractor shall submit one copy of Safety Data Sheets of hazardous substances to be stored or used on the Owner's premises or incorporated into the Work to the Construction Manager before bringing such substances on site. The Contractor shall also keep Safety Data Sheets posted at the work site for all hazardous substances while these substances are on the Owner's premises. Hazardous substances for the purposes of this section shall be any substance which is covered by Right to Know rules or laws.

#### **§ 3.4 Labor and Materials**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Work required by the Contract Documents to be performed after "normal" working hours or work the Contractor elects to perform after "normal" working hours shall be completed at no additional cost to the Owner.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 After the Contract has been executed, the Owner, Construction Manager and Architect will consider requests for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions, the Contractor:

- .1 Represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 Represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 Certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architects redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- .4 Shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- .5 Agrees to compensate the Architect for any redesign fees or costs necessitated by and associated with the product substitution.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by Owner. Any person not complying with all such requirements shall be immediately removed from the site.

§ 3.4.3.1 The Contractor shall be responsible for conducting a criminal background check and a check of the Iowa Sex Offender Registry as to all persons working on Owner property or in Owner buildings. This includes all employees of the Contractor or any sub-contractor, all Independent Contractors, Casual Laborers, Workers obtained through Union Halls or Hiring Halls, and all other individuals present on Owner property at any time during the performance of the Contract. No person shall be permitted to work on Owner property is on the Sex Offender Registry as a result of a conviction of a crime against a minor. The Contractor will notify the Owner in advance for any proposed Contractor employee with a felony conviction and such person will not be placed on-site without prior Owner approval. The Contractor must have records available for the Owner to inspect upon request to verify that background/sex offender checks have been performed as required herein. The Owner reserves the right to order the Contractor to remove any person from the Owner's Work who the Owner determines to be a threat to safety of students, Owner employees, other workers, parents, visitors, or otherwise. All workers must follow Owner regulations and rules as to building access and security.

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§ 3.4.3.21 The Contractor (Company) shall not be owned, operated, or managed by a registered sex offender who has been convicted of a sex offense against a minor in accordance with Iowa Code 692A.113. In addition, the Contractor shall not permit an employee, Subcontractor (Company) owned, operated, or managed by, or Subcontractor employee who is a registered sex offender convicted of a sex offense against a minor on real property of the schools of the Owner in accordance with Iowa Code 692A.113. The Contractor shall further acknowledge and certifies, by execution of the Contract with the Owner, that the y-services provided under this Contract comply with Iowa Code 692A.113, and shall fully execute and deliver copy of 'Acknowledgment and Certification' with Bid Form. Refer to Document 00 4100.

§ 3.4.3.32 The Contractor shall also keep its employees and those of its subcontractor from socializing upon the site of the work after normal work hours and from fraternizing at any time with staff, students, parents and other persons who are at the school or the site of the work.

§ 3.4.3.43 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect or Architect's Consultants, to evaluate the Contractor's proposed substitutions and to make agreed upon changes in the Contract Documents made necessary by the Owner's acceptance of such substitutions.

§ 3.4.3.54 The Contractor, and those working under their jurisdiction, shall be licensed to perform business in the State of Iowa and provide a copy of their Iowa Workforce Development Division of Labor Services Contractor Registration, conform to local labor laws of the State of Iowa and all other laws, ordinances and legal requirements affecting the Work. Prior to starting Work, the Contractor shall become familiar with local labor and trade conditions, skilled and unskilled, and shall conform to local conditions. The Contractor shall consider the availability of labor in the area and import labor as may be required to meet the schedule for the Work.

§ 3.4.3.65 Contractor shall strictly abide by all laws relating to employment eligibility verifications and shall employ only persons who are legally able to work.

### § 3.5 Warranty

The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the workmanship will be free from defects not inherent in the quality required or permitted, that the workmanship will comply with all applicable laws, building codes, rules and regulations, and that the workmanship will conform to the requirements of the Contract Documents.

§ 3.5.2 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.3 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

§ 3.5.4 In case of work performed by Subcontractors and where warranties are required, secure warranties from said Subcontractors addressed to and in favor of the Owner. Deliver copies of same to Architect through the Construction

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Manager upon completion of work. Delivery of said warranties shall not relieve the Contractor from any obligations assumed under any other provision of Contract.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Pursuant to Iowa Code, at the time this Agreement is issued, the Owner will issue an "Exemption Authorization Letter" and a "Designated Exemption Entity, Iowa Construction Sales Tax Exemption Certificate" for the purchase or use of building materials, supplies and equipment to the extent permitted by law. Other requirements with respect to this provision are set forth within the Project Manual.

§ 3.6.1 Bidders shall be responsible for informing themselves of tax laws, requirements, regulations, and interpretations as they apply to this Project.

§ 3.6.2 The Contractor shall not include in the bid State of Iowa and Local Option Sales and Use Tax for building materials that will be incorporated into real property for this project. Each Bid Package Contractor shall provide a list of Subcontractors and Sub-subcontractors with their Federal Identification Number to the Owner. The Owner will issue exemption certificates to Contractors, Subcontractors and Sub-subcontractors in order to eliminate tax from the construction materials following award of contract. If material is purchased outside the State of Iowa and the other state requires that the Contractors, Subcontractors, Sub-subcontractors and suppliers pay sales tax, they are recommended to include this price in their bid unless they are able to obtain a sales tax refund from said state.

§ 3.6.3 The Contractor shall submit required sales tax exemption information within ten (10) days of the date of the Agreement between Owner and Contractor.

### **§ 3.7 Permits, Fees, Notices, and Compliance with Laws**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor or any of its Subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor shall take note and comply with all governing laws, rules and regulations affecting the performance of the Work. This may include such laws, rules and regulations as: (1) Licensing of Contractors for special requirements, e.g. hazardous waste removal; (2) Requirements for special construction permits; (3) Exemption from sales tax, if applicable; (4) Wage rates and employment requirements when required by law or by Owner; (5) Local labor requirements; and (6) Non-discriminatory hiring practices. Contractor shall participate in all equal employment opportunity programs applicable to the Project.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor is responsible for scheduling inspections related to the performance of its Work and ensuring Work is complete for inspections. Any costs associated with re-inspection caused by irregularities, deficiencies or non-conforming Work will be borne by the responsible contractor including -compensation for the Architect's, Architect's Consultant's and Construction Manager's Additional Services related to evaluation of the problem and development of an acceptable solution.

§ 3.7.7 The State of Iowa, its agencies, and its political subdivisions, including cities, school district and public utilities are required by Iowa Code 73A.21 to require a reciprocal resident bidder and resident labor force preference.

§ 3.7.7.1 A "resident bidder" means a person or entity authorized to transact business in the State of Iowa and having a place of business for transacting business with the state at which it is conducting and has conducted business for at least three (3) years prior to the date of the first advertisement for the public improvement. If any other state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign county.

§ 3.7.7.2 A Resident Bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country other than Iowa if that state or foreign country gives or requires any preference to bidders from that state of foreign country, gives or requires any preference to bidders from that state of foreign country, including, but not limited to, any preference to bidders the imposition of any type of force preference, or any other form of preferential treatment to bidders or laborers from the state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

§ 3.7.7.3 If the Contractor is a nonresident bidder the Contractor is required to specify in the Agreement between the Owner and Contractor whether any preference is in effect in the nonresident bidder's state or country at the time of this bid and identify the source of the regulations.

§ 3.7.7.4 Compliance with Law Provision: the Contractor agrees that it will comply with all applicable Federal, State and local laws, statutes, codes, rules, and regulations having jurisdiction over Contractor's performance of the Work for the Project. Contractor shall take all necessary precautions to keep the site and work in compliance with the safety and health regulations for construction issued by the Bureau of Labor Standards of the U.S. Department of Labor as well as the Occupational Safety and Health Standards, as amended and as enforced by the State of Iowa.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

§ 3.9.1 ~~The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work, including work of the Contractor's subcontractors. Any change in superintendent personnel must be approved by the Owner in writing. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Other communications shall be similarly confirmed on written request in each case. This individual shall be fluent in all languages necessary to communicate with Contractor's employees and subcontractors. Owner and Construction Manager shall be furnished with the e-mail address and pager, home and cell phone numbers for the Superintendent. The approved superintendent will work in this position until completion of the Work unless he shall no longer be in the Contractor's employ, or shall be released at the request of the Architect, Construction Manager and/or Owner.~~

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, within ten (10) days of the date of the Agreement between Owner and Contractor, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent and key personnel in regular attendance at the pProject site. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or other key personnel, or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent or other key personnel to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.3.1 The Superintendent or Superintendents shall be thoroughly competent with full experience in all phases of the Wwork to be performed under this Contract. Anyone not deemed capable of directing all trades involved in the Wwork shall be replaced or supplemented immediately upon request, by someone who is satisfactory. After a satisfactory Superintendent has been assigned, they shall not be withdrawn without the consent of the Construction Manager, Architect and/or Owner.

### § 3.10 Contractor's Construction Schedules

§ 3.10.1 ~~The Contractor, promptly after being awarded within fourteentwenty (1420) days of the award of the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, monthly or as otherwise requested by the Owner, Construction Manager or Architect, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces. Each monthly update shall include a narrative including:~~

- .1 A description of the status of the schedule;
- .2 A discussion of current and anticipated delays;
- .3 A discussion of progress of critical path activities;
- .4 A discussion of the critical path for the remainder of the pProject; and
- .5 A listing and discussion of logic changes and duration changes.

§ 3.10.2 The Contractor shall prepare a submittal schedule, ~~promptly after being awarded the Contract within fourteen (14) days of the award of Contract~~ and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

#### § 3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. The Contractor shall display a current Construction Schedule at the site for reference and reliance by the Owner, Architect and Construction Manager. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The record documents shall be a separate set of documents used only for record purposes and kept clean and undamaged.

#### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors. The Contractor must provide the Owner, Architect and Construction Manager with copies of all submittals made to regulatory agencies.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a

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submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§3.12.11 The Architect's and Construction Manager's review of the Contractor's submittals will be limited to examination of an initial submittal plus one re-submittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid the Architect and/or Construction Manager for evaluation of additional re-submittals.

### § 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

§ 3.13.3 Contractor shall perform the Work so as to cause a minimum of inconvenience to and interruption of the Owner's operations. Any and all interruptions of the operations of the Owner necessary for the performance of the Work shall be noted in the progress schedule and the Contractor shall additionally give the Owner sufficient advance notice, through communication with the Construction Manager, of such interruption as to allow the Owner to adjust operations accordingly. Contractor's failure to give the Owner timely notice of such intentions shall place the responsibility of any resulting delays or additional costs solely with the Contractor.

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§ 3.13.4 The Contractor shall not bring or permit any Subcontractor, supplier or anyone else for whom the Contractor is responsible, to bring on the site any asbestos, PCB's petroleum, hazardous waste or radioactive materials (except for proper use in performing the Work).

§ 3.13.5 The Contractor shall return all improvements on, or about the site, streets, and adjacent properties which are not indicated to be altered, removed, or otherwise changed, to the conditions which existed prior to start of Work. The Contractor shall protect existing structures or other features from damage by any operation in connection with the Contract.

§ 3.13.26 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§3.13.3 Before making any shipment of materials to the project site, Contractor shall ascertain that the Project site is in a condition to receive the shipment. If material is delivered to the Project site and the Project is not in condition to receive the materials, the materials shall be removed from the site and properly stored off-site at the expense of the Contractor or its Subcontractor. All deliveries must be coordinated in advance through the Construction Manager. The Construction Manager will not provide any labor or equipment to unload deliveries for any Contractor or its Subcontractor.

#### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. Contractors shall be responsible for cutting and patching not specifically indicated on the drawings but required for completion of their Work. Cutting and patching shall be kept to a minimum by careful planning and through providing holes, sleeves, anchors, inserts, or other built-in items as Work progresses and then only to the extent required to properly place, support, hang, anchor, or install materials and equipment. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. All patching is subject to Architect and Construction Manager's acceptance. Unauthorized or careless cutting will not be permitted. No structural member shall be cut unless approved by the Architect or Architect's Consultants.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Cutting and patching of construction work, or excavation and backfilling in or about the building shall be done under the direct supervision of the Contractor for that portion of Work being altered, who shall be responsible to see that patching and backfilling is accomplished by using proper labor, material, equipment and methods consistent with the requirements for other similar construction.

§ 3.14.4 Each Contractor is responsible for all cutting, fitting, patching, excavation and backfill required to complete its Work, including uncovering portions of the Work to provide for installation of ill-timed work; removing and replacing defective work; removing and replacing work not conforming to the requirements of the Contract Documents; and removing samples of installed work as specified for testing.

§3.14.5 The Contractor shall provide:

- all necessary shoring, bracing and other supports to assure the structural safety of that portion of the work;
- all necessary devices and methods to protect other portions of the project from damage including, but not limited to, temporary partitions and dust enclosures as required.
- all necessary protection from the elements for that portion of the project which may be exposed by cutting and patching work, and pumping to maintain excavations free from water.

§3.14.6 The Contractor shall restore work which has been cut or removed and install new products to provide completed Work in accordance with the requirements of the Contract Documents. The Contractor shall refinish entire

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surfaces as necessary to provide an even finish to match adjacent finishes. For continuous surfaces, the Contractor shall refinish to the nearest intersection and for an assembly, and shall refinish the entire unit.

§3.14.7 If a dispute arises between Trade Contractors as to their responsibility for cutting, fitting, patching, excavation or backfill, as required by the foregoing sections or elsewhere in the Contract Documents, the Construction Manager may have such work completed and charge the cost thereof to the appropriate Contractors.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor and their subcontractors shall at all times keep the premises and surrounding area free from accumulation of waste materials, fire hazards, or rubbish caused by operations under the Contract and shall keep their work area neat and orderly through the construction period. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Prime Contractor shall police all daily clean-up assigning clean up to related subcontract work. All clean-up not done in one (1) days, shall be done by the Prime Contractor. The Pproject shall be kept neat and free of debris at all times.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, within twenty four (24) hours after notice the Owner, or Construction Manager with the Owner's approval, may clean the Site and back charge the Contractor for all costs associated with the cleaning de so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

§ 3.16.1 Work will be performed in accordance with the Contract Documents, the Applicable Building Code, and other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time. The Contractor must not permit work outside of hours established in the Contract Documents on a Saturday, Sunday or State or federal holiday without the written consent of the Owner, given after prior written notice to the Architect and any other applicable consultants, such consent, if given, may be conditioned upon payment by the Contractor of the Owner's, Construction Manager and Architect's and any other applicable consultants' additional costs and fees, testing or regulatory agency costs incurred in monitoring such off-hours Work. The Contractor must notify the Owner and/or Construction Manager as soon as possible if Work must be performed outside such times in the interest of the safety and protection of persons or property at the Site or adjacent thereto, or in the event of any emergency. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent and person responsible for the protection of persons and property at the Site and compliance with all applicable laws and regulations, if different from the superintendent.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Architect, or Construction Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect through the Construction Manager.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect and Construction Manager Its and their agents, representatives, consultants and employees ("Indemnitee(s))" from and against any and all claims, damages, causes of action, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance or prosecution of the Work by the Contractor, its subcontractors, agents, or employees in the

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performance of any duties imposed by the Contract or by law, provided that any such claim, damage, loss or expense is Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, caused in whole or in part by any act or omission of the Contractor, anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by an Indemnitee. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, its agents, representatives, and employees of any of them (Indemnitees) from and against any and all claims, damages, causes of action, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from or in connection with the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnity. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist, as to any party or person described in Contract Documents.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 In the event the Owner should prevail in any legal action arising out of the performance or non-performance of this Agreement, the Contractor shall pay, in addition to any damages, all expenses of such action including reasonable attorney's fees, all expert witness fees, costs, and litigation expenses incurred by the Owner, including those incurred on appeal. The term "legal action" shall be deemed to include any arbitration, administrative proceedings, and all actions at law or in equity, including appeals.

### §3.19 MISCELLANEOUS CONTRACTOR RESPONSIBILITIES

§3.19.1 The Contractor agrees to adhere to the Federal Occupational Safety Act, State and local safety regulations, and the Construction Manager's Safety Program, so as to avoid injury or damage to persons or property, and to be directly responsible for damage to persons and property resulting from failure to do so.

§3.19.2 If the Construction Manager issues a safety notice to the Contractor and the Contractor fails to take corrective action immediately to insure compliance with said safety regulations and/or removal of rubbish and debris resulting from his Work that is creating a hazard, the Construction Manager shall rectify the hazard(s) with the cost of same to be reimbursed to the Owner without further notice to the Contractor.

§3.19.3 The Contractor agrees to notify the Construction Manager's representative on the job site of all accidents resulting in bodily injury or property damage shall provide the Construction Manager's representative with a copy of all accident reports on appropriate forms. All reports shall be signed by the Contractor or his authorized representative and submitted within twenty-four (24) hours of occurrence.

§3.19.4 The Contractor agrees to adequately and properly protect its Work during construction and after completion of a task until substantial completion.

§3.19.5 The Contractor agrees that all disputes concerning the jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect, either nationally or in the locality in which the Work is being done.

§3.19.6 The Contractor shall submit to the Construction Manager upon request, copies of orders placed for the various materials required for the Project, or authentic stock lists if such material is normally a stock item. Order copies need not reflect prices, but should indicate type of material, quantity, vendor name and address, etc. The Contractor shall be required to submit to the Construction Manager a monthly Material Status Report, or more often if required by the Construction Manager, as a prerequisite for the monthly progress payment. The Contractor shall notify the Construction Manager immediately upon learning of a change in status of any material, equipment or supplies.

§3.19.7 The Contractor agrees to maintain an adequate force of experienced workers and the necessary materials, supplies and equipment to meet the requirements of the Construction Manager and other trades in order to maintain construction progress schedules, as established by the Construction Manager and Owner. In the event that its force is, in the judgment of the Construction Manager, inadequate to meet the established schedules during the regular work hours, the Contractor agrees to work sufficient overtime hours or increase its work force to meet such schedules at no extra cost to the Owner.

§3.19.8 The Contractor agrees to employ competent administrative, supervisory and field personnel to accomplish the Work, including layout and engineering and preparation and checking of shop drawings.

§3.19.9 The Contractor shall insure that construction tools, equipment, temporary facilities, and other items used in accomplishing the Work, whether purchased, rented or otherwise provided by the Contractor or provided by others, are in a safe, sound and good condition, they must be capable of performing the functions for which they are intended, and maintained in conformance with applicable laws and regulations.

§3.19.10 Contractor shall use, at all times on the Work, only such labor as will in no way whatsoever disturb or affect labor employed by the Owner or other contractors on the site, and Contractor's employees shall work in harmony with all such employees and contractors. Contractor shall consult with Construction Manager before making any disputed work assignments.

§3.19.11 Contractor shall assign to and maintain on the Work, a force of experienced employees, equipment and tools in first class operating condition, adequate to complete the Work within the prescribed time schedule, and shall furnish careful, efficient and experienced business administration and supervision of the work force.

§3.19.12 Any of Contractor's assigned personnel or subcontractors whom the Owner may consider to be incompetent, careless, insubordinate or otherwise objectionable, or whose conduct or presence is considered to be detrimental to the best interests of the Project, or who are not required for the Work, shall be removed at Owner's request. Owner shall not incur any liability, responsibility or obligation whatsoever in regard to exercising its rights herein either to Contractor or any other person.

§3.19.13 Contractor shall in all respects comply with, and shall cooperate with the Owner in enforcing, all site procedures, conditions and rules established by the Owner which affect any of the Work being performed for the Project or at the Jobsite, including, but not limited to: Project schedules; access; security; traffic and solicitation; work and storage areas; utilities; safety; medical and first aid facilities; fire and explosion precautions; pollution; sanitation; cleanup and work conditions. Contractor shall be required to attend all Jobsite or Project meetings held by the Owner in regard to site control, procedures, schedule or coordination.

#### ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

##### § 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The "Architect" is defined in this Contract as the Engineer or Architect lawfully licensed by the State to practice architecture or engineering or an entity, licensed by the State to lawfully practice architecture or engineering identified as such in this Contract and as is

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referred to throughout the Contract documents as if singular in number. The term "Engineer," "Architect/Engineer," "Engineer/Architect," "Architect's authorized representative," "Engineer's authorized representative," or "Architect/Engineer's authorized representative" shall mean "Architect" as defined in this paragraph.

§ 4.1.2 The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.3 Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect and Contractor. Consent shall not be unreasonably withheld.

~~§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.~~

#### § 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

~~§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work. The Architect, as a representative of the Owner, shall attend regular monthly construction meetings and shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to by Owner and Architect and/or as otherwise required in Section 4.3.3, to observe and evaluate the Work to become generally familiar with the progress and quality of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, is proceeding in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner and the Construction Manager reasonably informed about the progress and quality of the Work, and report to the Owner and Construction Manager in writing any (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. The Architect will provide the Owner with monthly written observation reports and construction update minutes as the Project Progress"~~

~~§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies of the Work.~~

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed and when otherwise necessary even when work is not being performed as mutually determined by the Owner and Construction Manager. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, ~~except as provided in Section 3.3.1,~~ and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Architect shall report to the Owner known deviations from the Contract Documents in writing.

§ 4.2.6 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's

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review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Architect and Construction Manager will review the initial submittal and one (1) re-submittal. If further review is required on more than one (1) re-submittal (i.e. second, third or more re-submittal) the Architect will do so on an hourly basis. The Architect and Construction Manager will then charge the Owner for this additional service (as provided in the Agreement between the Architect and Owner and Construction Manager and Owner) and the Owner will then deduct the sum due for those additional services occasioned by excessive re-submittals from the amount due to the Contractor at the next application for payment. In addition, if submittals are provided either incomplete or requiring other submittals in order to conduct an appropriate review, and the Contractor requests review of these "incomplete" submittals, they will be reviewed on an hourly basis as set forth above.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7. and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 The Architect will interpret and decide matters concerning performance under, and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.18 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, ~~will not show partiality to either~~ and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.19 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 ~~Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, within 10 days after the award of the Contract shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) along with a list of actual materials or equipment they will be furnishing, proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner, Architect and Construction Manager advised of any new Subcontractors employed.~~ The Contractor, as soon as practicable after award of the Contract, within 10 days after the award of the Contract shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) along with a list of actual materials or equipment they will be furnishing, proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner, Architect and Construction Manager advised of any new Subcontractors employed.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor met all criteria set forth in the Contract Documents was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Acceptance or rejection of any subcontractor shall not relieve the Contractor of performance of Work as called for under the Contract Documents, nor shall acceptance of a particular subcontractor be construed as acceptance of any particular process or material.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents.

Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

~~§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.~~

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

### ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

#### § 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Contractor shall give notification of the potential of a claim in writing to the Owner and/or Separate Contractor within forty-eight (48) hours of the occurrence or discovery of the potential of an occurrence of the delay or action that will result in making a claim.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

#### § 6.2 Mutual Responsibility

§ 6.2.1 ~~Each The Contractor and their Subcontractors shall cooperate with and coordinate their Work with all other Multiple Prime Contractors and their Subcontractors, Construction Manager and Owner to facilitate the general progress of the Project and to prevent delay of others.~~ The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Each Contractor or Subcontractor shall provide and obtain layout drawings, rough-in detail sheets and other pertinent information directly from the Construction Manager to coordinate all phases of the Work. For coordination with the Owner's equipment or materials, information shall be obtained from the Owner, through the Construction Manager. After timely notification by the Contractor of the need to accomplish a particular phase or element of the Work, other contractor's shall, within reasonable time, perform their Work so as not to delay or impede the Contractor.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report

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shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities, ~~or defective construction or lack of coordination with other Contractor's~~. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of ~~delays, improperly timed activities, damage to the Work, or~~ defective construction, or lack of coordination by the Owner's own forces or other Multiple Prime Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No claim for an addition to the maximum Contract sum shall be considered a valid claim unless a written change order procedure is followed as outlined in this Article. Verbal authorization for changes must be supported by written approval before being considered valid.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum (Methods used in determining adjustments to the Contract Sum shall include those listed in Subparagraph 7.3.3.); and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.1 The Contractor must submit change proposals covering a contemplated Change Order within seven (7) days after request of the Owner, or the Construction Manager or within seven (7) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including, but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if

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the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-Subcontractor. The Subcontractors or Sub-Subcontractors overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with this Section 7.2.2 without accepting the change proposal in its entirety.

§ 7.2.2 If the Owner determines that a change proposal is appropriate, the Construction Manager will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner, Construction Manager and Architect sign the Change Order.

§ 7.2.3 The forms used to process a Change Order will Include AIA Document G701/CMA, Change Order.

§ 7.2.4 The Contractor's signature on a Change Order shall constitute a full, final, and complete waiver and settlement of any and all claims, demands, and causes of action that Contractor has, or may have in the future, arising out of or relating to the Change Order and the occurrences, acts, omissions, or events upon which the Change Order is based. No "reservation of rights" or other attempt by Contractor to preserve present or future claims arising out of or relating to the Change Order (or arising out of or relating to the cumulative effect of the Change Order in combination with other Change Orders) shall be effective unless Owner and Contractor shall both agree, in a separate writing signed by both parties contemporaneously with Contractor's execution of the Change Order, to the specific terms, conditions, scope, and duration of such reservation of rights.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order, and upon prior written approval of the Owner.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager, Owner and Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.
- .6 Cost of subcontracted work, computed in the same way as provided for under this Section.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The maximum that will be allowed for overhead and profit or commission shall be (values are expressed as a percentage of the basic cost of the change) ten percent (10%) maximum mark-up for work performed by employees of the Contractor, Subcontractor, or Sub-Subcontractor; and five percent (5%) maximum Contractor mark-up for work performed by a Subcontractor.

§ 7.3.12 In any proposal with material, equipment and supply credits, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered. No cancellation, restocking or similar charge will be allowed unless actually incurred by the purchaser and generally will not be allowed when the product has not been shipped.

§ 7.3.13 Cost changes shall be computed by determining the basic costs indicated under Subparagraph 7.3.7, to which the overhead and profit or commission may be added.

§ 7.3.14 Subcontractors or Sub-subcontractors shall compute their costs in the same way and are subject to the same conditions of what may be included in the cost and same maximum percentages for overhead and profit or commission. To the Sub-Subcontractor's proposal, the Subcontractor may add bond cost, if applicable, and up to five percent (5%) commission. To the Subcontractors proposal, the Contractor may add bond cost and up to five percent (5%) commission.

§ 7.3.15 For changes involving work self-performed by the Contractor and work by a Subcontractor or Sub-Subcontractor, the commission shall be applied directly to the Subcontractor's proposal with the overhead and profit figure applied only to the Work self-performed by the Contractor.

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§ 7.3.16 In the event individual credits exceed \$5,000, a reasonable credit for bond expense and overhead and profit or commission shall be provided to the Owner.

§ 7.3.17 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.18 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.19 For changes in the Work under Clauses 7.3.3.1, 7.3.3.2, 7.3.3.3 and 7.3.3.4, the change request shall be itemized as provided under this Subparagraph 7.3.19. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Construction Manager.

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§ 7.3.19.1 As a minimum, the detailed breakdown shall include and indicate the items enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this Article 7.

(a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid to the workmen in accordance with established management labor agreements.

(b) Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA. No other costs will be allowed as burden on labor.

(c) Quantities of materials, equipment and supplies, at their actual costs, with unit costs indicated.

(d) The cost of subcontracted work computed in the same way as provided for under this Subparagraph 7.3.19.

(e) Overhead, profit and commission.

(f) Applicable sales tax on materials, if any, added after the above computations are complete.OK

#### § 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

#### ARTICLE 8 TIME

##### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for ~~Substantial-Final~~ Completion of the Work.

§ 8.1.2 The date of commencement of the Work shall be the earliest date when all required paperwork, bonds and insurance certificates are in place and all Contract Documents have been executed by all parties~~is the date established in the Agreement.~~

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve both Substantial Completion and Final Completion within the Contract Time specified. If Contractor’s Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule. The Work shall not be suspended or shut down but shall progress continuously with sufficient labor and supervision at all times unless otherwise approved by the Owner.

§ 8.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

§ 8.2.5 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and Final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.6 If the Contractor’s progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

§ 8.2.7 The Owner reserves the right to issue a written directive, through the Construction Manager, to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner’s own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by ~~labor disputes~~, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation ~~and arbitration~~, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. A time extension shall be Contractor’s sole remedy and compensation for all such delays other than those resulting from the acts or negligence of the Owner, the Architect, the Construction Manager or the Owner’s separate contractors (collectively “Owner Caused Delays”). For proven Owner Caused Delays, the Contractor may recoup the actual costs resulting from such delays, but not for any additional profit or fee.

§ 8.3.1.1 If in the opinion of the Construction Manager and Architect the Work is behind where it is supposed to be in the Project Time Schedule or it is likely that the Work will not be substantially complete by the applicable date for Substantial Completion, the Contractor, upon written notice from the Construction Manager and without additional cost or compensation, will increase its work force and, if requested by the Construction Manager, work such overtime

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to make up for the delay. Should the Contractor fail to increase its work force, work overtime, or proceed to make up for the delay to the satisfaction of the Construction Manager or the Owner, the Construction Manager or Owner, in addition to other remedies under this Agreement and other Contract Documents, will have the right to cause other Contractors to work overtime and to take whatever other action is deemed necessary to avoid delay in the Substantial Completion of the Work and of the Project, and the cost and expense of such overtime and other action will be borne by the Contractor and may be set off against sums due the Contractor.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum ~~or Guaranteed Maximum Price~~, the Contractor shall submit to the Construction Manager, within thirty (30) days before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

### § 9.3 Applications for Payment

~~§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. At least thirty (30) days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be on AIA Document G732 CMA and by AIA Document G703 or such other form as may be prescribed by the Owner and shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Construction Manager may require, such as copies of requisitions from Subcontractors and material suppliers. If the Contract Documents required the Owner to retain a portion of the payments until some future time, the Applications for Payment shall clearly state the percentage and the amount to be retained. Once the Application is approved by the Construction Manager and Architect, the Application for Payment must be submitted for approval to the Shenandoah Community School District Board of Directors at their next regularly scheduled meeting. The application must be received at the Board Secretary's office at least one week prior to the scheduled meeting for it to be included in that meeting's scheduled business.~~

§ 9.3.1.1 As provided in Section 7.3.917, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment must be consistent with the approved Schedule of Values and shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work and for which Bills of Sale and bailment Agreements on the forms attached to the Agreement as Exhibits have been submitted to the

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**Construction Manager.** If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.3.4 The Owner, in making partial payment, will retain five percent (5%) of the approved value of the Work performed under the Contract as of the date of the application for payment until final completion and acceptance of all Work covered by the Contract, or as otherwise required by law.**

#### § 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the

Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 service work not attended to;
- .9 evidence of lack of careful workmanship;
- .10 unworkmanlike or over expeditious construction;
- .11 lack of attention to the special field duties specified.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the Construction Manager has issued a Certificate for Payment and after the Architect has reviewed and authorized the issued a Certificate for Payment or Project Certificate for Payment to the Owner, the Owner shall ~~make approve~~ payment with Contractor to receive payment by the last day of the following month. in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect. Until

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Substantial Completion, the Owner will pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments and the Owner will withhold five percent (5%) retainage as allowed by Iowa law.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

~~§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:~~

- ~~.1 Have been paid from the proceeds of previous progress payments; and~~
- ~~.2 Will be paid in a timely manner from the proceeds of the progress payment currently due.~~

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under Section 14.2 of the Contract. Contractor shall submit Applications for Payment to Construction Manager on a monthly basis or as otherwise specified in the Contract Documents. Once the Construction Manager submits a completed Application for Payment with its Certificate of Payment to the Owner, the Owner within thirty (30) days after its receipt of a Request for Payment from the Construction Manager shall pay the approved amount contained in the Request for Payment to the Contractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 ~~Issuance of Aa~~ Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. The Contractor and its Surety agree any issuance of a project certificate for payment, payment on the Contract Sum, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner, Architect, or Construction Manager as a result of any such occupancy. At any time the Surety shall have the right to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Payment to the Contractor will be made by the Owner from cash on hand from such sources as may be legally available.

## § 9.7 Failure of Payment

~~If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by binding~~

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~~dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut down, delay and start up, plus interest as provided for in the Contract Documents. If Owner does not pay the Contractor within sixty (60) days after the Contractor submits an Application for Payment to the Construction Manager, the Contractor may file a claim in accordance with Article 15 of this Contract.~~

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use, subject only to completion of minor punch list items, the absence of which does not interfere with the Owner's intended use of the Project. The Contractor assumes the responsibility for notifying the Construction Manager in writing when ready for final review of the Work. This letter to the Construction Manager shall include the date after which the Contractor will be ready for final review of the Work. Designated portions of the Work will be reviewed separately.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

~~§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. After Substantial Completion the Contractor shall coordinate its activities with the Owner's use of the substantially completed Work and shall diligently complete the remaining Work, without delay or interruption, within sixty days of the issuance of the Substantial Completion Certificate. If the Contractor fails to complete its Work with the allotted sixty (60) days, the Owner may invoke its right to carry out the work under Article 2, Subparagraph 2.4 of the Owner may invoke its right to terminate the contract under Article 14, Subparagraph 14.2.~~

§ 9.8.6 The Certificate of Substantial Completion and accompanying Punch List must be submitted to the Owner and Contractor for execution, which will constitute their written acceptance of responsibilities assigned to them in such Certificate. The Contractor shall reimburse the Owner for any Architect's and Construction Manager's additional services or attorney's fees incurred as a result of Contractor's failure to finally complete the Work within sixty (60) days after the date specified in the Contract Documents for Project Substantial Completion, or subsequently modified by change orders or dates established in the Certificate of Substantial Completion. For purposes of this paragraph "incurred as a result of" includes any architectural fees charged to Owner as Additional Fees under the Contract due to the fact that the services were performed sixty (60) days (or some other amount of time specified in the Owner/Architect Agreement and/or Owner/Construction Manager Agreement) after Substantial Completion. The

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nature of the services performed (and whether they would have otherwise been performed as normal closeout services at some point under Basic Services) is not relevant to the Contractor's obligations for reimbursement under this section if the Ceontract between the Owner and Architect or Contract between Owner and Construction Manager states that any and all services and related fees are defined as Additional Services solely because they were performed more than sixty (60) days (or some other amount of time specified in the Owner/Architect Agreement and/or Owner/Construction Manager Agreement) after Substantial Completion.

§ 9.8.6.7 Unless otherwise required by Iowa law, Retainage shall be released no earlier than thirty-one (31) days after completion and final acceptance by the Owner of all Work required by the Contract.

§ 9.8.8 If the Owner withholds an amount from the retainage payment to the Contractor, the Owner will provide a reason the request is being denied to the Contractor within thirty (30) calendar days of the receipt of the request.

§ 9.8.9 Warranties required by the Contract Documents will commence on the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion or the Contract Documents.

§ 9.8.10 Upon execution of the Certificate of Substantial Completion, the Contractor will deliver custody and control of such Work to the Owner. The Owner will thereafter provide the Contractor reasonable access to such Work to permit the Contractor to fulfill the correction, completion and other responsibilities remaining under the Contract and the Certificate of Substantial Completion.

§ 9.8.11 Unless otherwise provided in the Certificate of Substantial Completion, the Contractor must complete or correct all items included in the final Punch List within sixty (60) days, subject to the availability of special order parts and materials, after the Date of Substantial Completion.

§ 9.8.12 At the time of Substantial Completion, in addition to removing rubbish and leaving the building "broom clean," the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in the Contract Documents.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, or reduction in liquidated damages, if appropriate, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the



Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner, Architect and Construction Manager and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Upon receipt of the Contractor's notice and request for final inspection, the Owner, Construction Manager and the Architect will promptly make such inspection and, when the Owner, Construction Manager and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Construction Manager will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Construction Manager will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner, Construction Manager or the Architect until the Work is determined to be finally complete.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Final payment will be made no earlier than thirty-one (31) days following approval by the School Board at a regularly scheduled meeting upon receipt of all Lien Waiver and/or Chapter 573 Claim Releases, Sales Tax information, and all other required closeout documents, and subject to the conditions of and in accordance with the provisions of Iowa Code Chapter 573 and Iowa Code Chapter 26. Owner may withhold from final payment any and all amounts required to reimburse the Owner for all costs, fees (including reasonable attorney's fees) it incurred as a result of any Chapter 573 Claims filed on the Pproject. Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents to the Construction Manager and/or Architect:

- .1 An Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;

- .2 A release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 A certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Document;
- .5 Consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 Other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .7 All warranties and bonds required by the Contract Documents; and
- .8 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 No assignment by the Contractor of any principal contract or any part thereof, or of the funds to be received thereunder by the Contractor, will be recognized unless such assignment has had the written approval of the Owner and the Surety has been given due notice of such assignment and has furnished written consent thereto. In addition to the usual recitals in the Assignment Contract, the following language must be set forth:

"It is agreed that the funds to be paid to the Assignee under this Assignment are subject to prior lien/claims for services rendered on materials supplied for the performance of all Work called for in said Contract, in favor of all persons, firms or corporations rendering such services supplying such materials."

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.2.1 Contractors shall comply with the Iowa Smoke Free Air Act while on Property and shall not smoke or use any tobacco product while on Owner property. Owner's property shall include, but not be limited to, inside private Contractor or employee owned vehicles while parked on Owner property.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall give Owner reasonable advanced notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault, acts, operations, methods, or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.5.1 Contractor's required remedial actions for damage and loss to property referred to in Clauses 10.2.1.2 and 10.2.1.3 shall repair the damaged materials and surfaces to their original condition, or better, to the satisfaction of the Owner. All such repairs are the responsibility of the Contractor and shall be accomplished at no additional cost to the Owner.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 The Contractor shall have a written safety program for the protection of persons and property. Contractor's safety program shall be submitted to the Construction Manager within ten (10) days of the date of the Agreement between Owner and Contractor. The Construction Manager will review the safety program and monitor Contractor implementation. The Contractor, not the Owner, shall be entirely responsible and liable for the safety of persons and property. The review of the safety program and monitoring of Contractor implementation by the Construction Manager does not shift that responsibility and liability to the Owner or Construction Manager.

- .1 The Construction Manager reserves the right to suspend work activity or deny access to the site of the work Contractor's, Subcontractor's, Sub-subcontractor's and their employees for repeated safety program rules violations.

§ 10.2.9 This is a hard hat and safety glasses project. Use of personal protective equipment (PPE) will be required at all times and shall be modified to protect against hazards associated with certain Work activities.

- .1 The Construction Manager reserves the right to stop or suspend work for Contractor's, Subcontractor's, Sub-subcontractor's and their employees failure to properly use PPE.

### § 10.2.810 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. No product containing asbestos, Polychlorinated Biphenyl (PCB), lead-based materials or any other hazardous material identified by the United States Environmental Protection Agency shall be knowingly incorporated into the Work.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction

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or authorization from the Owner, Construction Manager or Architect, to prevent threatened damage, injury or loss. The Contractor must promptly, but in all events with twenty-four (24) hours of the emergency, report such action in writing to the Owner, Construction Manager and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Liability Insurance

~~§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

- ~~.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;~~
- ~~.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~
- ~~.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~
- ~~.4 Claims for damages insured by usual personal injury liability coverage;~~
- ~~.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and~~
- ~~.7 Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.~~

§ 11.1.1 The Contractor shall purchase from an insurer that has a current A.M. Best Rating of A-VI or better and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The Contractor shall have the following insurance coverage. The Contractor shall supply the Owner with Certificates(s) of Insurance, in triplicate, which shows that the minimum coverages are provided. All coverage shall be on an occurrence basis.

#### A. Comprehensive Commercial General Liability Combined Single Limits covering Bodily Injury, Property Damage and Personal Injury:

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The General Liability policy shall have the Designated Construction Project General Aggregate Limit endorsement attached – ISO form CG 2503 or its equivalent.

General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate Limit:	\$2,000,000
Personal and Advertising Injury Limit:	\$1,000,000
Each Occurrence Limit:	\$1,000,000
Fire Damage Limit (for any one fire)	\$ 50,000
Medical Damage Limit (any one person)	\$ 5,000

B. Contractor shall furnish Excess/Umbrella Liability coverage, in an amount not less than \$2,000,000. This policy shall provide equal coverage to that stipulated in (A) above, and (C) and (D) below, and shall have complete concurrency with underlying coverages.

C. Workers' Compensation and Employers' Liability Insurance:

Bodily Injury by Accident:	\$500,000 per accident
Bodily Injury by Disease	\$500,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

Workers' Compensation shall meet State of Iowa statutory limits. The Contractor's workers compensation policy must include form WC 000313, Waiver of Our Right to Recover from Others.

D. Commercial Automobile Liability insurance, covering all owned, non-owned, hired and leased vehicles with a minimum combined single limit for Bodily Injury and Property Damage of \$1,000,000. Insurance must include Contractual Liability.

E. The Owner's property insurance shall only cover portions of the Work installed on the site. All portions of the Work off-site shall be covered by the Contractor's insurance policies. The Contractor shall furnish an "Installation Floater" as a part of their insurance coverage, which shall cover materials destined for the jobsite, on the jobsite and materials not yet installed as part of the Project. The Owner shall not make payment on any portions of the Work and/or materials not on the site, except under written stipulations and conditions as set forth by the Owner's legal counsel and insurance carrier and/or representative.

F. The Certificates of Insurance shall be issued on AIA Document G705, Accord Form 25-S current form, or a form that provides, in a similar manner, the same information.

G. The Contractor and their insurance carrier must fully disclose, in writing, along with the submission of their Certificates of Insurance, any and all judgments which have been, are in the process of pending claims filed, or knowledge of any or all potential claims which may, will be or already have reduced the available limits of coverage to be afforded and extended to the Owner. The Contractor will be responsible for purchasing additional coverage in order to provide the Owner with the insurance coverages as required.

H. Builders Risk Insurance: See Article 11.3.

I. All policies must include a waiver of subrogation clause.

§ 11.1.3 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.4 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to

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expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.5 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds on a primary and noncontributory basis for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Owner, Construction Manager and the Architect shall be named as Additional Insured on all liability coverages with respect to liability caused in whole or in part by the Contractor, and shall be shown as such on the Certificate. Said Certificate must be provided to the Owner before commencement of any aspect of the Work. All liability policies except Worker's Comp shall be endorsed as follows: "The insurance company and the insured expressly agree and state that the purchase of this policy of insurance by the insured does not waive any of the defense of governmental immunity available to the insured under Iowa Code section 670.4 as it now exists or may be amended from time to time. The company and the insured further agree that this policy of insurance shall cover only its claims not subject to the defense of governmental immunity under Iowa Code section 670.4 as it now exists or may be amended from time to time" The certificate of insurance relating to all liability coverages shall state: "The insurance company and the insured expressly agree and state that granting additional insured status on this policy of insurance does not waive any of the defense of governmental immunity available to the school district under Iowa Code chapter 670 as it now exists or may be amended from time to time".

#### § 11.2 Owner's Liability Insurance

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

#### § 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, ~~flood~~, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.



§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account insurance proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.

#### § 11.4 Performance Bond and Payment Bond

§ 11.4.1 ~~The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. The cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum for Performance and Payment.~~

§ 11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three (3) days following the date of the Agreement, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.4.1.2 The Contractor shall require the attorney-in-fact, who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.4.1.3 The Contractor shall comply with any other maintenance and warranty bond requirements required elsewhere in the project manual.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Construction Manager upon written authorization from Owner ~~by either~~, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time. The Contractor shall give timely notice to the Architect through the Construction Manager of the readiness of the Work to be observed.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request upon written authorization from the Owner to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner or such separate Contractor providing work not in accordance with the Contract Documents shall be responsible for payment of such costs.

## § 12.2 Correction of Work

### § 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed unless the Owner elects to accept the Work as provided for under Section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Work rejected before final completion shall be corrected prior to processing of the Contractor's Final Application and Certificate for Payment.

### § 12.2.2 After Substantial Completion

~~§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. In addition to the Contractor's obligations under Section 3.5, if, within one (1) year after the date of Substantial Completion of the Work or designed portion thereof or after the date for commencement of warranties established under any other provision of the Contract Documents, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Before commencing correction of the Work, Contractor shall submit to the Owner a written description of its proposed repair. This proposal must be approved by the Construction Manager and Architect before the Contractor commences the repair. Once the Contractor has completed the repair work, it shall notify the Owner, Construction Manager and Architect who shall promptly review the corrected Work. If the Construction Manager, Architect or the Owner rejects the corrected Work, the Contractor shall continue with the repairs until such time as the Construction Manager, Architect and the Owner accept the correct Work. Where the Contractor corrects defective work during the initial one (1) year period after Substantial Completion, if the Owner discovers defects in the corrected Work within one (1) year after the repairs are made, then the Contractor shall be obligated, upon written notice from the Owner, to correct such defects within one (1) year from the date that repairs were made.~~

§ 12.2.2.2 The one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

~~§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

§ 12.2.2.4 Prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

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correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

~~§ 12.2.6 If the Contractor fails or refuses to correct the Work in accordance with its obligations under the Contract Documents after written notice from the Owner, then the Owner may correct the Work and the Contractor shall be liable for the costs to correct the Work, any related architectural, engineering or other consulting costs, attorney's fees and expenses, and fines or penalties, if any. Any amounts due to the Owner from the Contractor under this Section may be withheld from the balance of the Contract Sum not yet paid.~~

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 Governing Law

The Contract shall be governed by ~~and construed in accordance with~~ the laws of the ~~State of Iowa~~ ~~place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

#### § 13.2 Successors and Assigns

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

~~§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.~~

#### § 13.3 Written Notice

~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notices are to be provided to the representatives of the parties designated in this Contract. Written notices are deemed to have been duly served if delivered in person to the addressee for whom it was intended, or if delivered by overnight courier. The date of any notice is deemed to be the earlier of the date of personal delivery or the delivery by overnight courier.~~

#### § 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities, ~~unless provided otherwise in the Contract Documents~~. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. ~~The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as~~

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~~to avoid any delay in the Work.~~ The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. ~~The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

~~§ 13.5.7 In addition to the tests required by this Section 13.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.~~

#### § 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due ~~at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located and shall bear interest from the date the payment is due at the then current interest rate for stamped warrants pursuant to Iowa Code Section 74A.2 or the rate established under Iowa Code Section 573.14 Code of Iowa, whichever is less.~~

#### § 13.7 Time Limits on Claims

~~The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7. The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the time period specified by applicable law.~~

#### § 13.8 CONFORMANCE WITH LAWS

13.8.1 ~~The Contractor shall conform in all respects with the provisions of the Federal Civil Rights Act, the Code of Iowa, Chapter 216 Civil Rights Commission and the rules and regulations adopted thereto by the Iowa Civil Rights Commission. The Contractor shall not discriminate against any employee or applicant because of race, color, creed, religion, sex, national origin, ancestry, age, familial status, sexual orientation, gender identity, ethnic background, genetic information, physical or mental handicap or any other protected class under state or federal law. The Contractor shall comply with all applicable federal, state and local, laws, rules, regulations, ordinances, policies and~~

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procedures, including the Shenandoah Community School District policies and procedures and the Iowa Smoke Free Air Act. The Contractor shall require similar clauses in all of its subcontracts for service or materials.

#### § 13.9 OWNER'S RIGHT TO OCCUPY

§13.9.1 Owner shall have the right to occupy, without prejudice to rights of either party, any completed or largely completed portion of structure or Work, notwithstanding the fact that time for completing entire Work, or such portion thereof, may not have expired. Such occupancy and use shall not be an acceptance of Work taken or used.

#### § 13.10 REBATES

§13.10.1 Owner shall have the right to apply for, and secure all rebates which are available when Bids are received. Contractor shall provide invoices, itemizations, and cooperation to the Owner in this regard.

#### § 13.11 DRUG FREE AND SMOKE FREE ZONE

The Shenandoah-Community School District is a drug-free and tobacco-free zone. In furtherance of this standard, the Contractor shall establish and maintain a safe and efficient work environment for all employees, free from the effects of smoke, alcohol, controlled substances and illicit drugs.

- .1 Smoking and the use of smokeless tobacco shall be prohibited at all times on school property, including parking lots and inside of any private vehicles on school property.
- .2 The manufacture, distribution, dispensing, possession, or use of alcohol, controlled substances and illicit drugs is prohibited on or adjacent to the project site and all of the Owner's property at all times.
- .3 Illicit drug use is the use of illegal drugs and the abuse of alcohol and other drugs, including anabolic steroids.
- .4 Controlled substances are drugs specifically identified and regulated under state and federal law and include, but are not limited to, opiates, narcotics, cocaine, methamphetamines, and other stimulants, depressants, hallucinogenic substances and marijuana.
- .5 The Contractor will strictly enforce these prohibitions among its own employees and its Subcontractor's and their employees at all times. Employees who violate these prohibitions will be subject to disciplinary action by their employers up to and including termination and may be denied access to the site of the Work.
- .6 Violation of Section 13.11 shall also constitute sufficient grounds for termination of the Contract or any subcontract without damage or penalty to Owner.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons: The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop Work if payment is not made by the Owner within ten (10) days following the notice.

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the

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Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

~~§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- ~~.1 repeatedly refuses or fails to supply enough~~ Fails to supply adequate properly skilled workers or proper materials;
- ~~.2 fails to make payment to Subcontractors~~ or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors and Suppliers;
- ~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority~~ fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- ~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents~~ fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- .5 anticipatorily breaches or repudiates the Contract;
- .6 fails to make satisfactory progress in the prosecution of the Work required by the Contract; or
- .7 endangers the performance of this Contract.

~~§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety, terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner's written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without jurisdiction.~~

- ~~.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;~~
- ~~.2 Accept assignment of subcontracts pursuant to Section 5.4; and~~
- ~~.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

~~§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Upon receipt of written notice from the Owner of termination, the Contractor must:~~

- .1 Cease operations as directed by the Owner in the notice and, if required by the Owner, City and County, participate in an inspection of the Work with the Owner, City, County, Construction Manager and the

Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;

- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§ 14.2.4 Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders, and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.5 Upon termination for cause, the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.

§ 14.2.6 When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

§ 14.2.7 If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance, including actual or Liquidated Damages, if applicable, compensation for the Construction Manager and the Architect's services and expenses made necessary thereby, and other damages and expenses incurred by the Owner, including reasonable attorney's fees, exceeds the costs of completing the Work, including compensation for the Owner's, Construction Manager's and the Architect's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

§ 14.2.8 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

§ 14.2.9 If the Contractor files for protection, or a petition is filed against it, under the Bankruptcy laws, the Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor accepts that Owner shall petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate the Contract.

~~§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.~~

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 ~~Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall~~ Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 ~~cease operations as directed by the Owner in the notice~~ Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner, Construction Manager and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 ~~take actions necessary, or that the Owner may direct, for the protection and preservation of the Work~~ Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work; and
- .3 ~~except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders~~ Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders therefor.

Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.4.4 In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of terminating the following contracts including:
  - a. Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
  - b. Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
  - c. Documented transportation costs associated with removing Contractor-owned equipment;
  - d. Documented demobilization and close-out costs; and
  - e. Overhead and profit on the foregoing not to exceed ten percent (10%).
- 4 The Contractor will not be compensated for the cost of any idled employees unless the employee is under a written employment contract entitling the employee to continued employment after termination of the Contract and the employee cannot be assigned to other work provided that in all events the Contractor's costs must be limited to thirty (30) days of employment costs from the date of the notice of termination. The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Section 14.4.4 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 of this Subsection 14.4.4. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such



Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract.

§ 14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. A Claim is a written demand or assertion by the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. Nothing contained herein in this Subsection 15.1.1 is intended to apply to or in any way limit the Owner's right to make claims related to or arising out of this Contract.

§ 15.1.2 Notice of Claims. Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims by the Contractor must be initiated by written notice to the Owner, the Construction Manager and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor must be initiated within fourteen (14) days after occurrence of the event giving rise to such Claim or within fourteen (14) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a Subcontractor, as applicable.

§ 15.1.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

### § 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

~~§ 15.1.6 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~  
~~.1—damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~  
~~.2—damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

### ~~§ 15.3 Mediation~~

~~§ 15.3.1 Not Applicable. Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The parties shall endeavor in good faith to resolve claims, disputes and other matters in question between them by mutual agreement and may, by mutual agreement and in their discretion, submit same to non-binding mediation (mediation) which shall be in accordance with Iowa Code Chapter 679C unless otherwise agreed to by the parties. Requests for mediation shall be given in writing to the other party to this Agreement. If the Owner and Contractor are unable to mutually agree upon a mediator in writing within sixty (60) days of receiving the written request for mediation, either party may then institute legal or equitable proceedings. Mediation shall be voluntary only and shall not be a prerequisite to litigation or other means of dispute resolution.~~

~~§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

### ~~§ 15.4 Arbitration/Litigation~~

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Any legal claim brought under this Agreement shall be filed in the Iowa District Court in and for Fremont County, unless otherwise mutually agreed to by the parties.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

### ~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~

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