

Shenandoah Community School District Board of Directors
Shenandoah Administration Board Room
November 1, 2022 – 5:00 p.m.
Special Meeting

Board Agenda

1. Call to Order
2. Roll Call and Determination of Quorum
3. Public Hearing – JK-8 Window Project
4. Action Items
 - a. Approve JK-8 Window Replacement Project Bid Package with The Wilson Group, Inc. from the October 27th Bid Opening - \$1,010,655
 - b. Approve A132 Agreement with The Wilson Group, Inc. for the JK-8 Window Replacement Project
5. Informational Items:

Next Regular Meeting – November 14, 2022 at 5:00 p.m.
6. Adjournment

 **AIA[®] Document A132[™] – 2019****Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition**

AGREEMENT made as of the 1st day of November in the year 2022
(*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

Telephone: (712) 246-1581

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

The Wilson Group, Inc.
13510 Oak Street
Kansas City, MO 64145

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

Shenandoah Community School District
K-8 Window Replacement
601 Dr. Creighton Circle
Shenandoah, IA 51601

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

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

Telephone Number: (319) 754-8415

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

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

Telephone Number: (319) 754-8415

The Owner and Contractor agree as follows:

TABLE OF ARTICLES**ADDITIONS AND DELETIONS:**

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

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

This document is intended to be used in conjunction with AIA Documents A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132[™]–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232[™]–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes: (1346973506)

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

EXHIBIT A INSURANCE AND BONDS

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. The Work of this Contract is as follows as defined in the Contract Documents:

Bid Package No. 1

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall

(Paragraphs deleted)

be the date set forth in the Notice to Proceed, unless otherwise approved by the Owner. If the Notice to Proceed does not specify a date of commencement of the Work, the Work shall commence no later than ten (10) days after the Notice to Proceed is issued, unless otherwise approved by the Owner.

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

§ 3.3 Substantial Completion and Final Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be: July 26, 2023.

(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

Final Completion of the entire Work shall be achieved within thirty (30) days of Substantial Completion.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents and if different from the Substantial Completion date outlined in Section 3.3.1, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

Init.

Portion of Work

Substantial Completion Date

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date: July 26, 2023

§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

Portion of Work

Date to be substantially complete

(Paragraph deleted)

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

(Paragraphs deleted)

a Stipulated Sum, in accordance with Section 4.2

(Paragraphs deleted)

below.

§ 4.2 Stipulated Sum

§ 4.2.1 The Contract Sum shall be One Million Ten Thousand Six Hundred Fifty-Five and No/100 Dollars (\$1,010,655.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2.2 Alternates

§ 4.2.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate No. 1: Storefronts, Doors and Hardware	\$440,415.00

§ 4.2.2.2 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.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item

Price

Conditions for Acceptance

§ 4.2.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
Wood Blocking (350 LF)	\$1,050.00

§ 4.2.4 Unit prices, if any:

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

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Item	Units and Limitations	Price per Unit (\$0.00)
Unit Price No. 1: Wood Blocking		\$3.00/LF

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and 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.

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager at least fourteen (14) days before the next regularly scheduled meeting of the School Board, the Owner shall pay the certified amount to the Contractor not later than two weeks after approval by the School Board. If an Application for Payment is received by the Construction Manager after the application date fixed above, the Owner shall pay the certified amount not later than two (2) weeks after the next regularly scheduled meeting of the School Board held after the Construction Manager receives the Application for Payment or within thirty (30) days of receipt by the Owner for recommended approval, whichever is earlier.

§ 5.1.4 Progress Payments

§ 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. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. Preferred forms are AIA Form G-732-2019 and G703-1992.

§ 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 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

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User Notes:

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- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and
- .5 Retainage withheld pursuant to Section 5.1.5.

§ 5.1.5 Retainage

The Owner shall withhold up to five percent (5%) of each progress payment made to Contractor under Section 5.1.4 in accordance with Iowa Code Chapter 573.

(Paragraphs deleted)

§ 5.2 Final Payment

(Paragraphs deleted)

§ 5.2.1 The Owner shall pay the entire unpaid balance of the Contract Sum to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s Final Payment to the Contractor shall be made no earlier than thirty-one (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 final Certificate for Payment and recommendation for Final Acceptance. 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.

§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at

(Paragraphs deleted)

a rate equal to the rate specified by rule pursuant to Iowa Code Section 74A.2 or Iowa Code Section 573.14, whichever is less.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless

(Paragraphs deleted)

otherwise mutually agreed upon by the parties.

§ 6.2 Binding Dispute Resolution

Any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

(Paragraph deleted)

- Litigation in a court of competent jurisdiction.

(Paragraphs deleted)

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.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019. For the avoidance of doubt, if the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A232–2019, no termination fee shall be owed to the Contractor by the Owner.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

(Paragraphs deleted)

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Dr. Kerri Nelson, Superintendent
Shenandoah Community School District
304 West Nishna Road
Shenandoah, IA 51601
Phone: (712) 246-1581
Email: nelsonk@shenandoah.k12.ia.us

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Jordan Wilson
The Wilson Group, Inc.
13510 Oak Street
Kansas City, MO 64145
Cell: 816-434-3188
Email: jordan@thewilsongroupinc.com

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and/or elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

(Paragraphs deleted)

§ 8.6 Intentionally left blank.

§ 8.7 Relationship of the Parties

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

§ 8.8 Other provisions:

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§ 8.8.1 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 signing this Agreement that services provided under this Contract comply with Iowa Code 692A.113.

§ 8.8.2 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

§ 8.8.3 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

§ 8.8.4 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 8.8.5 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

§ 8.8.6 Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

§ 8.8.7 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

§ 8.8.8 Copeland "Anti-Kickback" Act. The Contractor shall comply with the terms of the Copeland "Anti-Kickback) Act (40 U.S.C. 3145, as supplemented by Department of Labor regulations (29 CFR Part 3, "Developers and Subcontractors on Public Building or Public Work Finances in Whole or in Part by Loans or Grants from the United States). The Contractor or sub-recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Any suspected or reported violations will be reported to the Federal awarding agency.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit
- .3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

.4

(Paragraphs deleted)

Performance and Payment Bonds in one hundred percent (100%) of the Contract Amount.

.5 Drawings

Number	Title	Date
G001	Title Sheet	October 7, 2022
G002	Standard Mounting Heights and General Notes	October 7, 2022
AD101A	First Floor Demo Plan – Area A	October 7, 2022
AD101B	First Floor Demo Plan – Area B	October 7, 2022
AD102A	Second Floor Demo Plan – Area A	October 7, 2022
AD102B	Second Floor Demo Plan – Area B	October 7, 2022
A100	Overall Floor Plans	October 7, 2022
A101A	First Floor Plan – Area A	October 7, 2022
A101B	First Floor Plan – Area B	October 7, 2022
A102A	Second Floor Plan – Area A	October 7, 2022
A102B	Second Floor Plan – Area B	October 7, 2022
A201	Building Elevations	October 7, 2022
A202	Building Elevations	October 7, 2022
A501	Details	October 7, 2022
A601	Schedules	October 7, 2022

.6 Specifications

Section	Date	Pages
EXHIBIT B – Project Manual – Table of Contents	October 7, 2022	2

.7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	October 18, 2022	3
Addendum No. 2	October 21, 2022	1
Addendum No. 3	October 24, 2022	1

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

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

Exhibit C – Off Site Storage Agreement

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[] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

[] The Sustainability Plan:

Title	Date	Pages
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[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

State of Iowa, Wage Determination Rate for "Building" Construction Type in Page County in Iowa, publication dated October 7, 2022, #IA20220051

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

OWNER

Shenandoah Community School District:

CONTRACTOR

The Wilson Group, Inc.

OWNER (Signature)

Jean Fitcher, President

CONTRACTOR (Signature)

Jordan Wilson, President

(Printed name and title)

02035669-1\16005-020



AIA[®] Document A132™ – 2019 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 1st day of November in the year 2022
(In words, indicate day, month, and year.)

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

Shenandoah Community School District
K-8 Window Replacement
601 Dr. Creighton Circle
Shenandoah, IA 51601

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

Shenandoah Community School District
304 West Nishna Road
Shenandoah, IA 51601

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

The Wilson Group, Inc.
13510 Oak Street
Kansas City, MO 64145

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A232™–2019, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

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

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A232™–2019, General Conditions of the Contract for Construction. Article 11 of A232™–2019 contains additional insurance provisions

§ A.2.2 Liability Insurance

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

§ A.2.3 Required Property Insurance

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

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

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

Causes of Loss	Sub-Limit
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§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s, Construction Manager’s, and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

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

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

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

(Paragraphs deleted)

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance, in triplicate, acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. 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. 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. These certificates and the insurance policies required by this Article A.3 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner and others as required in Section A.3.1.3 as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability, excess or umbrella liability and pollution liability coverage to include (1) the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, as additional insureds 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the additional insured's liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance or required by law, whichever coverage is greater from an insurance company or insurance companies that has a current A.M. Best Rating of A-VI or better and is lawfully authorized to issue insurance in the jurisdiction where the Project is located. Such insurance shall 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. **All policies must include a waiver of subrogation clause.** 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.

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".

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

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Five Million and No/100 Dollars (\$ 5,000,000) each occurrence, Five Million and No/100 Dollars (\$ 5,000,000) general aggregate, and Five Million and No/100 Dollars (\$ 5,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages, other than to the Work itself, because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.
- .6 The General Liability policy shall have the Designated Construction Project General Aggregate Limit endorsement attached – ISO form CG 2503 or its equivalent.

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

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

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than Five Million and No/100 Dollars (\$ 5,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. Automobile Liability insurance must include Contractual Liability.

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

§ A.3.2.5 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 in favor of the Owner, the Architect and the Architect's consultants, and the Construction Manager and the Construction Manager's consultants.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million and No/100 Dollars (\$1,000,000) each accident, One Million and No/100 Dollars (\$ 1,000,000) each employee, and One Million and No/100 Dollars (\$ 1,000,000) policy limit.

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

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million and No/100 Dollars (\$ 1,000,000) per claim and One Million and No/100 Dollars (\$ 1,000,000) in the aggregate.

§ A.3.2.9 If the Work of a specific Contractor involves the abatement, removal, disposal, transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than Two Million and No/100 Dollars (\$ 2,000,000) per claim and Two Million and No/100 Dollars (\$ 2,000,000) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Two Million and No/100 Dollars (\$ 2,000,000) per claim and Two Million and No/100 Dollars (\$ 2,000,000) in the aggregate.

(Paragraphs deleted)

§ A.3.3 Performance Bond and Payment Bond

The Contractor shall provide surety bonds covering faithful performance of the Contract and payment of obligations arising thereunder, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Performance Bond	For the amount of 100% of the Contract Amount
Payment Bond	For the amount of 100% of the Contract Amount

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement and shall be accompanied by a certified and current power of attorney for the attorney-in-fact, who executes the required bonds.

The cost of the bonds shall be included in the Contract Sum.

The surety providing bonds must have an (A-) A.M. Best rating or better or be listed on the U.S. Department of Treasury listing of approved sureties (Department Circular 570).

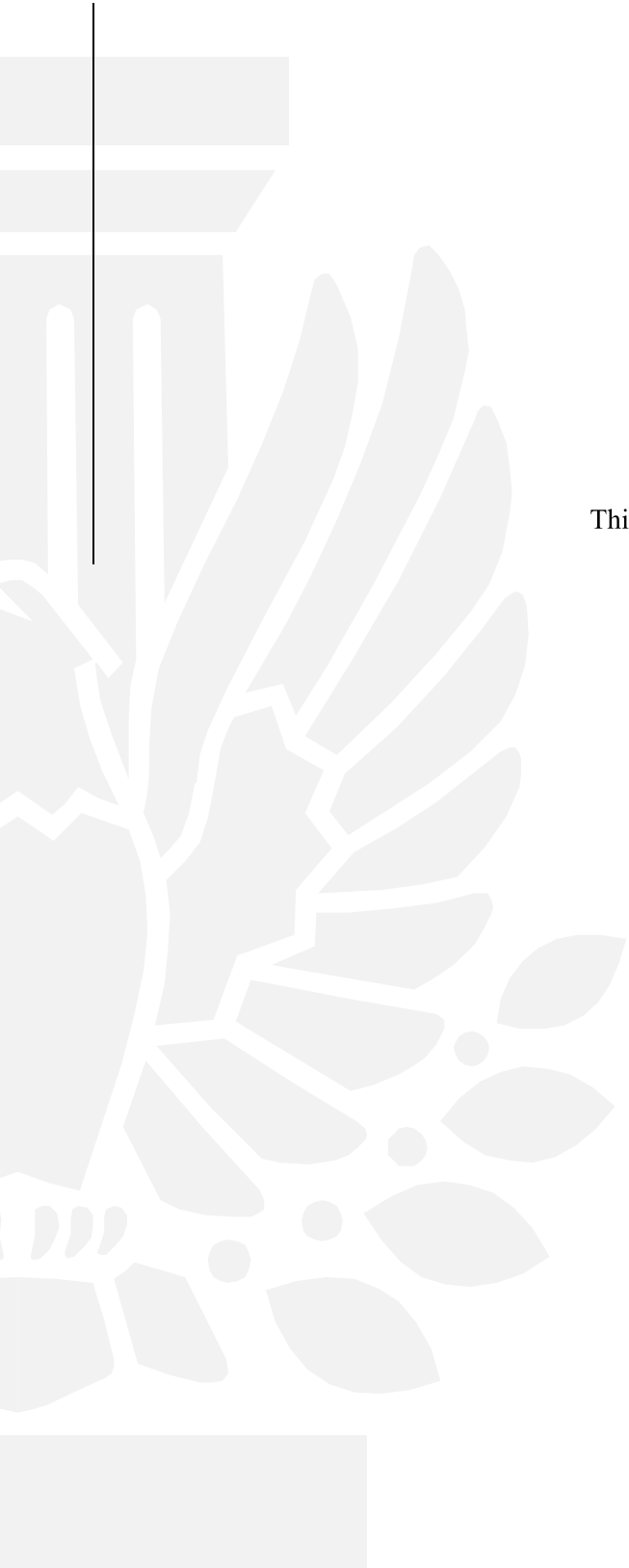
(Paragraph deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

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



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Init.

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October 7, 2022

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OFF-SITE STORAGE AGREEMENT

Made this _____ day of _____ in the year _____.

Between the Owner: _____
(Name and Address)

and the Contractor: _____
(Name and Address)

the Project: _____
(Name, Address and Project Number)

The Owner and the Contractor understand and agree that a portion of the Total Completed and Stored To Date shown on Application for Payment No. _____ represents an amount for material and/or equipment to be furnished and installed under their Agreement dated _____, and that this material and/or equipment is to be stored at a location other than the site, as follows and under the following conditions:

(Description of storage location and address)

(Detailed description of material or equipment)

(Detailed description of material or equipment continued)

(Detailed description of material or equipment continued)

- 1. Materials and/or equipment stored at the above location shall be plainly tagged or marked by the Contractor as Property of:

(Owner)

- 2. Title to stored materials and/or equipment shall pass to the Owner no later than the time of payment of the referenced Application for Payment.
- 3. Such materials shall be separately located and segregated by the Contractor from other materials at the place of storage. Photos of the stored materials and/or equipment shall be attached to this agreement by the Contractor.
- 4. Invoice(s) from your source for such materials and/or equipment to be stored shall be attached to this agreement
- 5. Such materials and/or equipment shall be kept free of any liens or encumbrances by the Contractor, and shall be kept adequately insured against loss to the Owner by theft, fire, or other casualty at the expense of the Contractor, and proof of such insurance shall be attached to this agreement.
- 6. Such material and/or equipment shall be stored as herein provided and moved to the site without delaying the Work and without expense to the Owner.

(Contractor)

Date: _____

(Owner)

Date: _____

Application and Certificate for Payment, Construction Manager as Adviser Edition

TO OWNER:	PROJECT:	APPLICATION NO:	DISTRIBUTION TO:
			OWNER <input type="checkbox"/>
FROM CONTRACTOR:	VIA CONSTRUCTION MANAGER:	PERIOD TO:	CONSTRUCTION MANAGER <input type="checkbox"/>
		CONTRACT DATE:	ARCHITECT <input type="checkbox"/>
		PROJECT NOS: / /	CONTRACTOR <input type="checkbox"/>
			FIELD <input type="checkbox"/>
CONTRACT FOR:	VIA ARCHITECT:		OTHER <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703™, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM.....	\$ _____
2. NET CHANGES IN THE WORK.....	\$ _____
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$ _____
4. TOTAL COMPLETED AND STORED TO DATE (Column G on G703)	\$ _____
5. RETAINAGE:	
a. _____ % of Completed Work (Column D + E on G703)	\$ _____
b. _____ % of Stored Material (Column F on G703)	\$ _____
Total Retainage (Lines 5a + 5b, or Total in Column I on G703)	\$ _____
6. TOTAL EARNED LESS RETAINAGE.....	\$ _____
(Line 4 minus Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT.....	\$ _____
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE.....	\$ <input style="width: 80px;" type="text"/>
9. BALANCE TO FINISH, INCLUDING RETAINAGE	
(Line 3 minus Line 6)	\$ _____

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before
me this day of

Notary Public: _____

My Commission expires: _____

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on evaluations of the Work and the data comprising this application, the Construction Manager and Architect certify to the Owner that to the best of their knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED.....\$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

CONSTRUCTION MANAGER:

By: _____ Date: _____

ARCHITECT: *(NOTE: If multiple contractors are responsible for performing portions of the Project, the Architect's Certification is not required.)*

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

SUMMARY OF CHANGES IN THE WORK	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ _____	\$ _____
Total approved this month, including Construction Change Directives	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____
NET CHANGES IN THE WORK	\$ _____	



AIA Document G703[®] – 1992

Continuation Sheet

AIA Document G702[®], Application and Certificate for Payment, or G732[™], Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
 APPLICATION DATE:
 PERIOD TO:
 ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED <i>(Not in D or E)</i>	G		H BALANCE TO FINISH <i>(C - G)</i>	I RETAINAGE <i>(If variable rate)</i>
			D FROM PREVIOUS APPLICATION <i>(D + E)</i>	E THIS PERIOD		G TOTAL COMPLETED AND STORED TO DATE <i>(D+E+F)</i>	% <i>(G ÷ C)</i>		
	GRAND TOTAL								

 **AIA[®] Document A232™ – 2019****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
K-8 Window Replacement
601 Dr. Creighton Circle
Shenandoah, IA 51601

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

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

Telephone Number: (319) 754-8415

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

Shenandoah Community School District
304 West Nishna Road
Shenandoah, IA 51601

Telephone Number: (712) 246-1581

THE ARCHITECT:*(Name, legal status, and address)*

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

Telephone Number: (319) 754-8415

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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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. 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 Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 **Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 **Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 **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.

§ 1.1.8 **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.

§ 1.1.9 **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.

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. 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. For the avoidance of doubt, the following terms shall have the meaning assigned to them:

- .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, Furnish or Produce: To supply, plus install complete in place, tested and approved.
- .3 Supply: To supply and deliver, unload, inspect for damage.
- .4 Install: To unpack, assemble, erect, apply, place, finish, cure, protect, clean, test 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. In any case of discrepancy, the facts are to be brought to the attention of the Architect for a decision or 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 or discrepancies 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 Supplementary Conditions;
- .4 General Conditions;
- .5 Drawings and Specifications.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party listed in the Contract and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party listed in the Contract by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, or some other agreed upon document or form, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraphs deleted)

ARTICLE 2 OWNER

§ 2.1 General

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraphs deleted)

§ 2.2 Intentionally Left Blank

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 The Owner shall retain a construction manager adviser 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.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 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; provided the same are in the possession and control of Owner or can be obtained without unreasonable expense. 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 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.

§ 2.3.6 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; provided such information or services can be furnished without unreasonable expense to the Owner.

§ 2.3.7 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 requested by the Contractor will be furnished by Owner at Contractor's expense, including costs incurred by the Owner related to reproduction, postage, and handling.

§ 2.3.8 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seventy-two (72) hours after receipt of 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 default or neglect or it may notify the surety and request it to assume the obligations of the Contractor within seventy-two (72) hours following receipt by Contractor and/or surety of written notice. 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 Architect's additional services and any attorney's fees made necessary by such default, neglect or failure. If current or future payments 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 Contractor shall perform the Work strictly in accordance with the Contract Documents.

§ 3.1.2.1 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. In no case shall the Contractor proceed with any portion of the Work in any uncertainty.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the 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. The Contractor waives any rights, claims, or causes of action against Owner as a result of activities or duties of the Architect in the Architect's administration of the Contract or representations made by the Architect in the Instruments of Service. The Contractor acknowledges any such rights, claims, or causes of action accrue against the Architect and Contractor may seek redress from Architect in the event that becomes necessary.

§ 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 2.3.5, 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. No extra charge or compensation will be allowed to the Contractor on account of differences between actual dimensions and the measurements shown on the Drawings. All the component parts of the Work shall be carefully checked and laid out in order that the structure as a whole shall conform to the intent of the Contract Documents. 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 Contractor'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 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.

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§ 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.

§ 3.2.7 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.8 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of 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 The Contractor shall follow all manufacturer's printed instructions covering details of installation where not in conflict with the Specifications. If there is a conflict between the manufacturer's printed instructions and the Plans and Specifications, the Contractor shall notify the Architect of the discrepancy and obtain the Architect's direction before proceeding with installation.

§ 3.3.6 Unless otherwise specified in the Specifications or by the Architect in writing to the Contractor, the Contractor shall order all materials in the maximum stock sizes available that conform with standard good practice of the trade.

§ 3.3.7 The Owner reserves the right to retain ownership of 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 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.

§ 3.3.8 Completed Work shall be left plumb, level, true to line or plane and anchored securely in place free from damage.

§ 3.3.9 The Contractor shall submit to the Owner's Authorized Contract Representative before construction begins one copy of Safety Data Sheets of hazardous substances to be stored on the Owner's premises or incorporated in the performance of this contract. The Contractor shall also keep Safety Data Sheets posted at the work site for all substances while these substances are on the Owner's premises. Hazardous substances shall be any substance which is covered by Iowa Law (Right to Know Rules). It is the Contractor's responsibility to obtain copies of the Safety Data Sheets and the Hazardous Communication Program which lists and describes hazardous substances stored on the school's premises and inform their employees of the potential exposure. This information is available in the administrative office of each building. Further details may be obtained from the Owner's Authorized Contract Representative.

§ 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 outside "normal" working hours or work the Contractor elects to perform outside "normal" working hours shall be completed at no additional cost to the Owner. If the Contractor elects to perform work outside the work hours established by the Construction Manager for the Contractor's convenience, the Contractor shall reimburse the Owner for any additional Architect or Construction Manager or other staffing costs incurred by the Owner. Any work outside the work hours established by the Construction Manager shall be scheduled with the Construction Manager two weeks in advance of the work taking place.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, 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;

- .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; and
- .5 Agrees to compensate the Architect for any redesign fees or costs necessitated by and associated with the product substitution.

§ 3.4.2.2 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 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 if 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.

§ 3.4.3.2 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.

§ 3.4.3.3 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

§ 3.5.1 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 to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that the workmanship will comply with all applicable laws, building codes, rules and regulations. Work, materials, or equipment not conforming to these requirements may be considered defective. If requested by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(Paragraph deleted)

§ 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 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. 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. In the case of work performed by Subcontractors and where warranties are required, the Contractor shall secure warranties from said Subcontractors addressed to and in favor of the Owner. The Contractor shall deliver copies of same to Architect through the Construction 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

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 for this Project 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 states requires that the Contractors, Subcontractors, and Sub-subcontractors and suppliers to 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 specified in the Contract Documents, the Owner, assisted by 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 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. 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 complete responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than fourteen (14) 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 that an equitable adjustment be made 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 submit a Claim as provided in Article 15.

§ 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 districts, and public utilities are required by Iowa Code 73A.21 to require a reciprocal resident bidder and resident labor force preference. If the Contractor is a non-resident bidder, the Contractor is required to specify in the bid and 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.

§ 3.7.8 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 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. The approved superintendent will work in this position until completion of the Work unless they shall no longer be in the Contractor's employ or is released at the request of the Architect, Construction Manager and/or Owner. Any change in superintendent or necessary assistants must be approved by Owner in writing.

§ 3.9.2 The Contractor, as soon as practicable (but no later than ten (10) days) after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of the proposed superintendent and key personnel in regular attendance at the Project site. Within fourteen (14) days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ the 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.

§ 3.9.4 The superintendent or superintendents shall be thoroughly competent with full experience in all phases of the Work to be performed under this Contract. Anyone not deemed capable of directing all trades involved in the Work 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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly (but no more than fourteen (14) days) after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in refining the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised monthly or as otherwise requested by the Owner, Construction Manager, or Architect. 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 Contractors, or the construction or operations of the Owner's own forces or Separate Contractors. Each monthly update of the schedule 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 Project; and
- .5 A listing and discussion of logic changes and duration changes.

§ 3.10.2 The Contractor, promptly (but no more than fourteen (14) days) after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the 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 make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

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similar required submittals. The Contractor shall display a current Project schedule at the site for reference and reliance by the Owner, Architect and Construction Manager. These shall be available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data, and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. 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 Contractors, Separate 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 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 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the 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.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to reasonably rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

§ 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, lawful orders of public authorities, Owner's written directives and policies, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 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 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 one week 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.

§ 3.13.4 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.

§ 3.13.5 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).

§ 3.13.6 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 of Contractor's operations on the site.

§ 3.13.7 Before making any shipments of materials or equipment to the project site, the Contractor shall ascertain that the project site is in a condition to receive the shipment. If materials or equipment should be delivered to the project site and the project site is not in condition to receive the materials or equipment, the materials or equipment shall be removed from the project site and properly stored off-site at the expense of the Contractor or its Subcontractor. All deliveries shall be coordinated through the Construction Manager. The Construction Manager will not provide any labor or equipment to unload deliveries for any Contractor or its Subcontractors.

§ 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its 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; and 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 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, 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.

§ 3.14.8 The Contractor shall submit a written request to the Construction Manager which shall be subject to review and approval of the Architect, prior to executing any cutting, alteration or excavation which affects the work of the Owner, Contractors or Separate Contractors or which may affect the structural safety of any portion of the Project. This request shall include, as a minimum, the effect on the work of the Owner, Contractors or Separate Contractors or on the structural safety of the project, the necessity for doing the cutting, alteration or excavations, a description of the proposed work and the extent of refinishing to be done.

§ 3.14.9 The Contractor shall report, in writing, any unsatisfactory conditions to the Construction Manager in writing and shall not proceed with the cutting, alteration or excavation until he has received further instructions from the Construction Manager.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor and its Subcontractors shall at all times keep the premises and surrounding area free from accumulation of waste materials, fire hazards, and rubbish caused by operations under the Contract. Furthermore, Contractor and its Subcontractors shall keep their individual work areas neat and orderly throughout the duration of the Project. 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 Contractor shall police all daily clean-up assigning clean up to related subcontract work. All clean-up not done daily, shall be done by the Contractor. The Project 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, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located. 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 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 an infringement of a copyright or patent is reasonably suspected or discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect 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, Construction Manager and Architect, and their agents, representatives, and employees (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 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 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 Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The Architect may be an 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. The Architect is referred to throughout the Contract documents as if singular in number, whether the Architect is a solo practitioner or a firm. 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 Section 2.3.2.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

§ 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, but may be conditioned in the Owner's discretion.

§ 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, 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 progresses.

§ 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 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 if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other 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, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, 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.** The Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the 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, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 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 other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other 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.

§ 4.2.11 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. 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 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 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 of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 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.

§ 4.2.15 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.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or 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.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.18 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 in writing or otherwise with reasonable promptness.

§ 4.2.19 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 and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.20 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.21 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, through 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.

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 Contractors or Separate Contractors or the subcontractors of other Contractors or Separate 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 The Contractor, within ten (10) days after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design along with a list of actual materials or equipment they are furnishing. Within fourteen (14) days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice 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 and 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 for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

§ 5.2.5 Manufacturers and Fabricators

§ 5.2.5.1 Not later than thirty (30) days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner, through the Construction Manager, the names of persons or entities proposed as manufacturers or fabricators for certain products, equipment and systems identified in the General Requirements (Division 1 of the Specifications) and, where applicable the name of the installing Subcontractor. The Construction Manager may reply within fourteen (14) days to the Contractor in writing stating:

- .1 whether the Owner or the Construction Manager has a reasonable objection to any such proposed person or entity, or
- .2 that the Construction Manager requires additional time to review.

§ 5.2.5.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Construction Manager has made reasonable and timely objection.

§ 5.3 Subcontractor 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 the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract 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; 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 Intentionally left blank.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE 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, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. 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 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 or Separate Contractors, the Construction Manager shall provide for coordination of such forces and Separate Contractors 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 Each Contractor and their Subcontractors shall cooperate with and coordinate their Work with all other Contractors, Separate Contractors, 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, Separate Contractors, Construction Manager and other 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 layout drawings, rough-in detail sheets and other pertinent information directly to 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 contractors 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, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities, defective construction, or lack of coordination. 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 by the Owner's own forces, Separate Contractors, or other Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other 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, Separate Contractors, other 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Required documentation and allowable costs for changes in the Work, whether covered by Section 7.2 or 7.3, shall be as follows:

- .1** Before the submission of the Contractor's first change proposal but in no case more than thirty (30) days after being awarded the Contract, the Contractor and its Subcontractors shall submit billable labor rates for straight time and overtime itemized by each trade and classification involved in the Project on a form provided by the Construction Manager. Billable labor rates shall be based on the actual rate paid to the workmen in accordance with Contractor's standard practice or established labor agreements. Payroll taxes, insurance and fringe benefits on labor shall be documented in detail and be only the actual costs incurred which may include mandatory fringe benefits required by Contractor's standard practice or established labor agreements, FICA taxes, state and federal unemployment taxes, workmen's compensation insurance net of discounts and experience modification rate and general liability cost if and to the extent paid on the basis of labor cost. No other costs or overhead will be allowed as burden on labor. The billable labor rates shall be approved in writing by the Owner or Construction Manager before being incorporated in a change order.
- .2** The Contractor shall submit change proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Construction Manager or within ten (10) 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.
- .3** Change proposals shall 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.
- .4** The following allowable cost for change proposals shall be itemized as provided in this Section. 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. At a minimum, the detailed breakdown shall include and indicate the items listed below:
 - .4.1** Labor costs based on approved billable rates including estimated or actual hours broken down by work element;
 - .4.2** Quantities of materials and actual unit prices of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed at their actual costs including trade and quantity discounts. Significant material unit prices shall be documented with vendor quotes;

- .4.3 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;
- .4.4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4.5 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, if any, directly related to the change;
- .4.6 Costs of direct line supervision directly attributable to the change; and
- .4.7 The cost of subcontracted or sub-subcontracted work computed and documented in the same way and subject to the same conditions as the Contractor;

§ 7.1.5 Allowable fees for overhead and profit for changes in the Work, whether covered by Section 7.2 or 7.3, shall be as follows:

- .1 The maximum fee that will be allowed for overhead and profit shall be (values are expressed as a percentage of the cost of the change) is ten percent (10%) maximum mark-up for work performed by employees of the Contractor, Subcontractor, or Sub-subcontractor; and five percent (5%) Contractor mark-up for work performed by a Subcontractor or Sub-subcontractor. In no case shall the cumulative fee paid by the Owner, regardless of the number of tiers of Contractors or Subcontractors, be greater than twenty percent (20%).
- .2 The fee percentages allowed above shall be deemed to include, and no further addition allowed the Contractor, Subcontractor or Sub-subcontractor for (i) field and office supervision and administration, including the field superintendent and non-working foremen; (ii) general insurance except that allowed as part of labor burden; (iii) use or replacement of hand tools; (iv) shop burden; (v) engineering costs; (vi) costs of general safety measures; (vii) or any other costs except those enumerated under Section 7.1.4.
- .3 For changes that involve both added and credited amounts, the fee shall be applied only to the net difference where the net amount is positive.
- .4 In the event an individual change results in a credit exceeding \$5,000, a reasonable credit for bond expense and overhead and profit or commission shall be provided to the Owner.

§ 7.2 Change Orders

§ 7.2.1 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; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 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 a change order form similar to 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 7.3.4.

§ 7.3.4 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 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. Costs and fees for the purposes of this Section 7.3.4 shall be limited to

(Paragraphs deleted)

those specified in Section 7.1.4 and 7.1.5.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the 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.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for 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.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time specified. If Contractor's Work falls 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. If work is interrupted due to normal weather conditions, the time lost shall be made up during weekends.

§ 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 (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by fire, unusual and unavoidable delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation; or (5) by other causes that the Contractor asserts and the Architect, based on his or her professional judgment and the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended 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 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.

§ 8.3.1.2 In the event of a concurrent delay attributable to any cause within the control of the Contractor and any other cause, the Contractor shall not be entitled to Contract Time extension or recovery of any actual costs for delay time that is concurrent.

§ 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

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed by a proposed Change Order or Construction Change Directive so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

The Contractor shall submit a schedule of values to the Construction Manager, within thirty (30) days before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. 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. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 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 Owner's 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 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 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 Absolute Bills of Sale and bailment Agreements on the forms attached to the Agreement as Exhibits have been submitted to the 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, suppliers, or other persons or entities that 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

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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 (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole 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 is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven (7) 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 (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications 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, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in 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, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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.

§ 9.4.6 The issuance of a 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 construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 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 9.4.3 and 9.4.4 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 9.4.2. 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, 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 suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or other 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;
- .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; or
- .11 lack of attention to the special field duties specified.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

(Paragraph deleted)

§ 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 Certificate for Payment or Project Certificate for Payment to the Owner, the Owner shall approve payment with Contractor to receive payment by the last day of the following month. Until 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 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 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 Issuance of a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. 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 or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of an Iowa Code Chapter 573 claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the Iowa Code Chapter 573 claim or other claim for payment has been asserted.

§ 9.6.9 Payment to the Contractor will be made by the Owner from cash on hand from such sources as may be legally available, as determined by the Owner.

§ 9.7 Failure of Payment

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 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 of all of the Contractors, 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 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 (60) 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 2.5 or 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 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 Contract 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.

§ 9.8.7 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 provided such occupancy or use is consented to by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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 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 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 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 Waivers 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 Project. 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 or Chapter 573 Claims 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

(Paragraphs deleted)
Intentionally left blank.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 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, a Subcontractor, or a Sub-subcontractor;
- .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, Separate Contractors, 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 This is a drug free (controlled substances), alcohol free, tobacco free and weapon free project. The manufacture, distribution, dispensing, possession, or use is prohibited on or adjacent to the school 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 implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, 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.

(Paragraphs deleted)

§ 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. The Construction Manager reserves the right to suspend work activity or deny access to the site of the Contractor's, Subcontractor's, Sub-subcontractor's and their employees' work 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. 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.

§ 10.2.10 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty (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 or substances. 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 notify the Owner, Construction Manager and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, 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 resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 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 hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting the safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction 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 Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

(Paragraph deleted)

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change

Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the 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, be uncovered for their examination 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 that the Construction Manager or Architect has not specifically requested to examine 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 two (2) years 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 corrected Work. Where the Contractor corrects defective work during the initial two (2) 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 for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

(Paragraph deleted)

§ 12.2.3 Intentionally left blank.

§ 12.2.2.4 Prior to the expiration of one (1) 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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 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.

§ 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 affected whether or not final payment has been made.

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.

§ 13.2 Successors and Assigns

The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

(Paragraphs deleted)

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.4.5 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.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 In addition to the tests required by this Section 13.4, 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.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date 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.

§ 13.6 Conformance with Laws

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 procedures, including the Owner's 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.

§ 13.7 Owner's Right to Occupy

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.

§ 13.8 Rebates

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.

§ 13.9 Drug Free and Smoke Free Zone

The Owner's property is a drug-free and tobacco-free zone under Iowa law. 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 Subcontractors 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 this Section 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

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.

(Paragraphs deleted)

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 fails to comply with any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 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

(Paragraphs deleted)

The Owner may 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.

§ 14.2.3 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, 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 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's 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, the 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, and 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.

§ 14.3 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 under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of 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 termination, the Contractor must:

- .1 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 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 related to the Work and enter into no further subcontracts or purchase orders therefor.

§ 14.4.3 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.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** 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 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 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 time period specified by applicable law.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by local weather data substantiating that: (a) the weather experienced at the project site was abnormal and unusually severe during the pendency of the Project, meaning the weather was more severe than the adverse weather anticipated at the Project location during any given month of the Project based on historic weather data; (b) the unusually severe weather actually caused a delay in the critical path of the Project schedule, meaning the weather delayed completion of a portion of the Work that must have been completed at the time the weather event occurred in order for the Project to timely proceed; and (c) the delay must have been beyond the control and without the fault or negligence of the Contractor.

(Paragraphs deleted)

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data

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from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Intentionally left blank.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

§ 15.3 Claims and Mediation

§ 15.3.1 Claims by the Contractor must be initiated by written notice to the Owner, the Construction Manager, and 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 the 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 a ten percent (10%) fee for overhead and profit.

§ 15.3.2 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.

(Paragraph deleted)

§ 15.4 Litigation

Any legal claim brought under this Agreement shall be filed in the Iowa District Court in and for the County in which the Project is located, unless otherwise mutually agreed to by the parties.



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