

**AGENDA WITH COMMENTARY**

**GUTHRIE PUBLIC SCHOOLS  
BOARD OF EDUCATION  
SPECIAL MEETING  
802 E. VILAS  
GUTHRIE, OK 73044**

**TUESDAY  
AUGUST 16, 2022  
7:30 A.M.**

**AGENDA:**

- 1. Call to Order**
- 2. Roll Call**
- 3. Establish a Quorum**
- 4. Pledge of Allegiance**
- 5. Moment of Silence**
- 6. Recommendation, consideration and action upon \$.10 increase for all paid student breakfast and lunch meals.....Page 4**

Commentary:

This memo was approved at the August 8<sup>th</sup> regular board meeting. We needed to make a correction. **Michelle Chapple will answer any questions.**

**RECOMMENDED ACTION:**

The Superintendent recommends approval.

- 7. Recommendation, consideration and action upon approval of contract with Centennial Contractors Enterprises, LLC for construction management services..... Pages 5-68**

Commentary:

The district issued an RFP for Construction Management At Risk Services in mid-February for Cotteral Elementary. Five firms submitted proposals for consideration. Screening and initial selection was held on March 21<sup>st</sup> by the Property Committee. Two firms were selected as finalists and were interviewed on April 4<sup>th</sup> by the Property Committee. On April 11<sup>th</sup> the committee brought the recommendation of Centennial Contractors Enterprises, LLC to the Board of Education. The board authorized the Superintendent to negotiate a contract with Centennial Contractors Enterprises, LLC. The contract has been recently finalized by attorneys for both Centennial Contractors Enterprises, LLC and Guthrie Public Schools and is now presented for final consideration by the Board of Education. **Dr. Simpson will answer any questions.**

**RECOMMENDED ACTION:**

The Superintendent recommends approval.

- 8. **Recommendation, consideration and action upon agreement with ProCare to provide Occupational Therapy services for Guthrie Public Schools during the 2022-2023 school year. ....Pages 69-80**

Commentary:

This service will provide virtually through the Voco Vision Platform. All Voco Vision computer equipment is provided by ProCare for no additional cost. A member of support staff will supervise the student during the virtual assessments. That service is being provided for 15 hours per week at the rate of \$91/hour. The cost of this service is approximately \$49,000 and will be paid for out of Special Education Federal Funds. **Angie Young will answer any questions.**

**RECOMMENDED ACTION:**

The Superintendent recommends approval.

- 9. **Recommendation, consideration and action upon agreement with ProCare to provide virtual School Psychology services for Guthrie Public Schools during the 2022-2023 school year. ....Pages 81-85**

Commentary:

This service will be provided virtually through the Voco Vision Platform. All Voco Vision computer equipment is provided by ProCare for no additional cost. A member of support staff will supervise the student during virtual services and assessments. This service is being provided for 20 hours per week at the rate of \$89/hour. The cost of this service will be approximately \$64,000. These services will be paid for through the OSDE Counselor Corps Grant and ESSER funds. This contract may be terminated with 30 days written notice if the delivery type does not meet the district’s needs. **Angie Young will answer any questions.**

**RECOMMENDED ACTION:**

The Superintendent recommends approval.

- 10. **Proposed executive session for the purpose of discussing employment of personnel, FMLA requests, resignation/separation from employment and transfer of position requests all as set out on the Personnel Reports, extra duty assignment as listed for 2022-2023, teacher negotiations for 2022-2023, Support Personnel Handbook for 2022-2023, and Administrator’s Handbook and Salary Schedule for 2022-2023 disclosure of which information would violate the confidentiality requirements of state and/or federal law all pursuant to 25 OKLA. STAT. Section 307 (B) 1, 2, and 7**
  - A. **Vote to go into executive session**
  - B. **Acknowledge Board’s return to open session**
  - C. **Statement of minutes of executive session**

- 11. **Vote on action as set out on the Personnel Reports.....Page 86**

- 12. **Action upon recommendation of extra-duty assignments as listed for 2022-2023...Page 87**

- 13. **Recommendation, consideration and action upon Negotiated Agreement between the Guthrie Association of Classroom Teachers and the Guthrie Board of Education for 2022-2023.....Pages 88-118**

**14. Recommendation, consideration and action upon Support Personnel Handbook for 2022-2023.....Pages 119-154**

Commentary:

Deletions to last year’s handbook are noted with a strike through and changes or additions are in red. **Doug Ogle will answer any questions.**

**RECOMMENDED ACTION:**

The Superintendent recommends approval.

**15. Recommendation, consideration and action upon Administrator’s Handbook and Salary Schedule, not including the Superintendent, for 2022-2023.....Pages 155-165**

Commentary:

Deletions to last year’s handbook are noted with a strike through and changes or additions are in red. **Doug Ogle will answer any questions.**

**RECOMMENDED ACTION:**

The Superintendent recommends approval.

**16. Adjourn**

**Dr. Mike Simpson  
Superintendent**

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Posted by: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Place: \_\_\_\_\_



Staking A Claim in Our Students' Future

August 9, 2022

To: Michelle Chapple, Chief Financial Officer

Due to the State Department of Education PLE Tool weighted average price requirement as proposed for Guthrie Public Schools, I am recommending a \$.10 increase for all Paid Student lunch meals as required by USDA.

This will increase PreK- 6<sup>th</sup> Paid Student Breakfast Meals from \$1.60 to **\$1.70**.

This will increase 7<sup>th</sup>-12<sup>th</sup> Paid Student Breakfast Meals from \$1.70 to **\$1.80**.

This will increase PreK- 4<sup>th</sup> Paid Student Lunch Meals from \$2.90 to **\$3.00**.

This will increase 5<sup>th</sup>- 6<sup>th</sup> Paid Student Lunch Meals from \$3.10 to **\$3.20**.

This will increase 7<sup>th</sup>-12<sup>th</sup> Paid Student Lunch Meals from \$3.20 to **\$3.30**.

I am also recommending an increase for all paid Adult meals for District Staff.

This will increase District Staff Breakfast from \$2.15 to **\$2.30**.

This will increase District Staff Lunch from \$4.15 to **\$4.85**.

Sincerely,

A handwritten signature in blue ink that reads 'Janette Freyre'.

Janette Freyre  
Child Nutrition Director  
Guthrie Public Schools



# AIA® Document A133™ – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the    day of May in the year 2022  
(In words, indicate day, month, and year.)

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

Board of Education for Independent School District No. 1 of  
Logan County, Oklahoma  
a/k/a Guthrie Public Schools  
802 East Villas Avenue  
Guthrie, Oklahoma 73044  
and the Construction Manager:  
(Name, legal status, address, and other information)

Centennial Contractors Enterprises, Inc.  
A Virginia Corporation  
**Main Office:**  
11111 Sunset Hills Road, Suite 350  
Reston, Virginia 20190

**Local Office:**  
715 North Ridge Dr.  
Stillwater, OK 74075  
Telephone: 405-744-2888

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

CMAR to Assist with Construction Management Services  
New Elementary School Construction at the site of  
Cotteral Elementary School  
2001 West Noble Avenue  
Guthrie, Oklahoma 73044

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

The Stacy Group, Inc.  
Owasso Office  
8091 N Owasso Expressway  
Owasso, Oklahoma 74055  
Phone: (918) 272-2622

The Owner and Construction Manager agree as follows.

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

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

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

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**User Notes:**

(1769108809)

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ARTICLE 1 INITIAL INFORMATION

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

*(Paragraph deleted)*

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

*(Paragraphs deleted)*

The Guthrie School District is soliciting construction oversight from a Construction Manager at Risk consultant to provide services under the jurisdiction of the Guthrie Board of Education.

The scope of work is for a new elementary school to be constructed at the current site for Cottoral Elementary School located at 2001 W. Noble Avenue, Guthrie, OK 73044. An important task of the CMAR is to work concurrently with the design team to provide conceptual budget development, construction feedback for the purpose of constructability, cost savings, and project oversight.

§ 1.1.2 The Project's physical characteristics:

*(Paragraph deleted)*

a new elementary school to be constructed at the current site for Cottoral Elementary School located at 2001 W. Noble Avenue, Guthrie, OK 73044.

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

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

*To be determined.*

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

.1 Design phase milestone dates, if any:

*To be determined*

.2 Construction commencement date:

*To be determined*

.3 Substantial Completion date or dates:

*To be determined*

.4 Other milestone dates:

*To be determined*

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

*Not applicable*

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

*Not applicable*

*(Paragraph deleted)*

§ 1.1.7 Other Project information:

*Not applicable*

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

*(List name, address, and other contact information.)*

Dr. Mike Simpson  
Superintendent  
Guthrie Public Schools  
802 E Vilas Avenue  
Guthrie, OK 73044  
Email: mike.simpson@guthriepls.net

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

*Not applicable*

§ 1.1.10 The Architect's representative:

*(List name, address, and other contact information.)*

Sean Willis  
The Stacy Group, Inc.  
Owasso Office  
8091 N Owasso Expressway  
Owasso, Oklahoma 74055  
*(Paragraphs deleted)*  
Phone: (918) 272-2622

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Article 3:

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**Construction Manager for Contractor:**

Jon Cupp  
715 North Ridge Dr.  
Stillwater, OK 74075

**Program General Manager for Contractor:**

Bruce Keller  
715 North Ridge Dr.  
Stillwater, OK 74075

*(Paragraphs deleted)*

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

*Not applicable*

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

*Not applicable*

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

*Not applicable*

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change during the development of the Guaranteed Maximum Price.

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

**ARTICLE 2 GENERAL PROVISIONS**

**§ 2.1 The Contract Documents**

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

**§ 2.2 Relationship of the Parties**

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

**§ 2.3 General Conditions**

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



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

### ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

#### § 3.1 Preconstruction Phase

##### § 3.1.1 Extent of Responsibility

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

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

##### § 3.1.3 Consultation

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

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

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

##### § 3.1.4 Project Schedule

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

##### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into

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consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### § 3.1.6 Cost Estimates

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

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

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

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

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

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

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

### § 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall undertake commercially reasonable efforts to develop bidders' interest in the Project. Trade Contractors and Suppliers shall be selected and contracts let in strict accordance with the provisions of the Public Competitive Bidding Act of 1974, OKLA. STAT. tit. 61, §§ 101, *et seq.* (the "Act"). The Construction Manager represents and warrants to the Owner that: (1) the Construction Manager has sufficient experience with the requirements of the Act to effectively and efficiently supervise the Project; (2) the Construction Manager will review all proposed contract documents, bidding materials, including bid notices, and bids received from potential Trade Contractors for compliance with the Act; and (3) the Construction Manager will verify that all Work performed under the Contract Documents is performed in accordance with the provisions of the Act. Construction Manager may elect to self-perform portions of the Work provided that the Construction Manager competitively bids the Work under the same terms and conditions as other bidders and the Construction Manager is the lowest responsible bidder for that construction contract. Where applicable, all bids shall be made and received in accordance with the provisions of the Act.

*(Paragraph deleted)*

### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall use reasonable efforts to expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the

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Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 3.1.13 Compliance with Laws

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

#### § 3.1.13.1 24/7 Tobacco Free Schools

The site of the Work is an educational facility. Therefore, the Construction Manager may not allow its officers, directors, or employees, or the officers, directors, or employees of any of its subcontractors at any tier to use any Tobacco Product on any school facility, including at the site of the Work. "Tobacco Product" means any bidis, cigars, cheroots, stogies, smoking tobacco and chewing tobacco, however prepared. Tobacco products shall include any other articles or products made of tobacco or any substitute thereof. The Contractor must require its Subcontractors to include this provision (Section 3.1.13.1) in its contracts with its supplier and subcontractors that may access the site of the Work.

#### § 3.1.13.2 Status Verification System

As required under **25 OK STAT § 25-1313**, the Contractor and its subcontractors at every tier must each register for and participate in a Status Verification System to verify information of all new employees. "Status Verification System" means an electronic system operated by the federal government to verify or ascertain the citizenship or immigration status of any individual hired by the Contractor or any of its subcontractors at any tier. The Contractor must require its Subcontractors to include this provision (Section 3.1.13.2) in its contracts with its supplier and subcontractors that may access the site of the Work.

#### § 3.1.13.3 Non-discrimination

The Contractor and its subcontractors at every tier are obligated not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, disability, genetic information, veteran status, marital status, or age. This obligation shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors and its subcontractors at every tier are obligated to comply with all requirements of the Americans with Disabilities Act. The Contractor and its subcontractors at every tier are obligated to fully comply with Executive Order 11246, as amended, the Vocational Rehabilitation Act of 1973, the Equal Employment Opportunities Act (42 U.S.C. § 2000e *et seq.*), and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. § 4212).

#### § 3.1.13.4 Clean Air Act

Contractor must 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).

#### § 3.1.13.5 Byrd Anti-lobbying Amendment (31 U.S.C. § 1352)

Offeror 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.

#### § 3.1.13.6 Domestic Preferences for Procurement (2 C.F.R. § 200.322)

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

#### § 3.1.13.7 Prohibition of Felony and Sex Offenders on School Premises

Neither the Contractor's officers, directors, or employees nor any of the officers, directors, or employees of any subcontractor at any tier will perform Work on the Owner's premises if such officer, director, or employee has been

convicted in Oklahoma, the United States, or any other state of any felony offense unless 10 years have elapsed since the date of the criminal conviction or the employee has received a pardon for the offense. Neither the Contractor's officers, directors, or employees nor any of the officers, directors, or employees of any subcontractor at any tier that will perform Work on the Owner's premises is currently registered under the *Oklahoma Sex Offenders Registration Act* or the *Mary Rippy Violent Crime Offenders Registration Act*. The Contractor and every subcontractor at any tier must conduct a felony record search of all employees who will be assigned to work at the Owner's premises.

#### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager

- .1 Update the rough budget based on the Owner's data from its 2019 budget to reflect the then prevailing costs of construction.
- .2 Meet no more often than monthly with the Owner and its Architect to discuss the Owner's approach for obtaining project funding and the project timing.
- .3 Update the rough budget and prepare a project schedule with major project activities, milestones, and key deliverables after the completion of the schematic design.
- .4 Meet no more often than monthly with the Owner and its Architect regarding project site use, material selection, project systems and equipment, and make recommendations based on availability, costs, and feasibility.
- .5 Recommend phased release of Contract Documents to facilitate construction phasing, if appropriate.
- .6 Update the rough budget and prepare a more detailed project schedule expanded to show activities by area or major item of capital equipment and identifying long lead items after the completion of the 30% of design documents.
- .7 Update the rough budget and prepare a more detailed, critical path method ("CPM") project schedule expanded to show all major milestones, major elements of design, engineering, procurement, construction, testing, commissioning and/or start-up after the completion of the 60% of design documents.
- .8 Recommend means and methods and material and equipment selection to Owner and Architect to accommodate the Guaranteed Maximum Price budget.
- .9 Update the rough budget and prepare a more detailed, critical path method ("CPM") project schedule expanded to a project working schedule after the completion of the 90% of design documents.
- .10 Update the rough budget to become the final construction budget and update the project working schedule after the completion of the issued for construction design documents.
- .11 Prepare a subcontracting plan.
- .12 We will solicit total project buyout and develop the GMP, complete with contingencies and project general conditions based on current construction schedule.

#### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 After the award of the Trade Contracts by the Owner, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of all Trade Contracts, including contingencies and allowances described in Section 3.2.4, the Construction Manager's contingency, the Cost of the Work, and the Construction Manager's fee.

§ 3.2.2 Omitted.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a contingency to account for unexpected costs which are considered a reimbursable as a part of the Cost of the Work but not included in the General Conditions. Any new Work or change in the scope of Work within any Construction Contract will be the subject of an approved Change Order. The Construction Manager's contingency shall be reasonable in amount and approved by the Owner with input from the Architect.

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

§ 3.2.6 Upon acceptance of the Guaranteed Maximum Price proposal, the parties will execute an Amendment to this Agreement establishing the Guaranteed Maximum Price and the date for Substantial Completion of the Work. The Construction Manager shall then execute the Trade Contracts and issue a Notice to Proceed in accordance with the Construction Management Act for Political Subdivisions.

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

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

*(Paragraph deleted)*

### § 3.3 Construction Phase

#### § 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the execution of a Guaranteed Maximum Price amendment by Owner and Construction Manager, and the Owner's issuance of a Notice to Proceed..

#### § 3.3.2 Administration

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

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

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager

shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

##### § 4.1 Information and Services Required of the Owner

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

##### § 4.1.2 Omitted

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

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

*(Paragraph deleted)*

##### § 4.2 Owner's Designated Representative

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

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

**§ 4.3 Architect**

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

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

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

A lump sum payment, payable in monthly installments, of \$247,500.00.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ 5.2 Payments**

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

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate

*(Paragraphs deleted)*

set in accordance with 62 OKL.ST.ANN. § 34.72. The interest rate shall not exceed 10% per annum.

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

**§ 6.1.1** The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

.1 The Construction Manager's certification for payment shall constitute a representation to the Owner, based upon the Construction Manager's review of the Work and onsite visits that, to the best of the Construction Manager's knowledge, information and reasonable belief, the Work has progressed to the point indicated and that the Work has been performed in a good and workmanlike manner in accordance with the Construction Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to substantial completion and to specific qualifications expressed by the Construction Manager upon submission of the Certificate for Payment. The issuance of the Certificate for Payment shall further constitute a representation by the Construction Manager that the Contractor is entitled to payment in the amount certified.

**§ 6.1.2** The Construction Manager's Fee:

*(Paragraph deleted)*

The Owner shall pay the Construction Manager 6.82% of the Cost of the Work as the Construction Manager's Fee.

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

The Construction Manager's Fee percentage is fixed.

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

Each Subcontractor's overhead and profit must be reasonable.

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§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ten percent ( 10%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

For each day after Substantial Completion that the Work is not Substantially Complete, the Construction Manager shall pay to the Owner \$100.00 (*one hundred dollars*).

§ 6.1.7

(Paragraphs deleted)

The Owner agrees to pay the Construction Manager a Completion Bonus as a cost saving incentive. The amount of the Completion Bonus will be calculated by (i) subtracting the final Cost of the Work and the Construction Manager's Fee from the Guaranteed Maximum Price and (ii) dividing the result by two (2). The Construction Manager may submit an Application for Payment for this Completion Bonus after Final Completion of the Project.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

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

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

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term "Cost of the Work" shall mean the total of the final Contract Sums of all of the Trade Contracts, plus the General Conditions and all reimbursable expenses relating to the Construction Phase of the Project. The term "Cost of the Work" does not include the compensation of the Architect, the Architect's or Owner's consultants, or the Construction Manager's Fee. The Cost of the Work shall include only those reimbursable expenses set forth in this Article 7. At the time the Guaranteed Maximum Price is established, an amount for Project requirements and General Conditions, as agreed to by the Owner and Construction Manager, will be determined, together with the date for Substantial Completion



of the Work, and will be set forth in Amendment No. 1. This sum for General Conditions will be billed and paid in equal monthly installments commencing with the calendar month next following the date of commencement of construction of the Project and concluding on the date established for Substantial Completion of the Work. Payments will be prorated for part of a calendar month at the commencement of construction and the calendar month during which Substantial Completion is to occur.

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

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

§ 7.2 **Labor Costs.** Wages of construction workers directly employed by the Construction Manager to perform any portion of the Work at the site, unless such work is included within bid packages competitively bid by the Construction Manager to be self-performed, and salaries of the Construction Manager's supervisory personnel whether or not stationed at the site and included as a part of the amount agreed to for General Conditions.

*(Paragraphs deleted)*

§ 7.3 **Subcontract Costs**

Payments made by the Construction Manager to Trade Contractors or Subcontractors in accordance with the requirements of the Trade Contracts and Subcontracts.

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

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

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

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

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

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

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

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

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

§ 7.6 **Miscellaneous Costs**

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

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*(Paragraphs deleted)*

§ 7.6.2 Omitted.

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

*(Paragraphs deleted)*

#### § 7.7 Other Costs and Emergencies

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

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

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

*(Paragraph deleted)*

#### § 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall

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be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

#### § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office in Reston, Virginia and offices other than the local site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase; and
- .10 Transportation expenses incurred for travel to and within the city of Guthrie, Oklahoma."

#### ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

*(Paragraphs deleted)*

#### ARTICLE 9 OMITTED

#### ARTICLE 10 ACCOUNTING RECORDS

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

#### ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

##### § 11.1 Progress Payments

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

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

§ 11.1.3 Payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment from the Construction Manager.

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

- .1 Contractor shall provide written monthly reports with each Application for Payment. Monthly reports must include a summary of the progress of the Work, a detailed, updated, current Project schedule, a log containing a record of weather and any requests for an extension of the time for Substantial Completion based upon weather delays. These monthly reports are considered an integral part of each Application for Payment.

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold five percent (5%), as retainage, from the payment otherwise  
*(Paragraphs deleted)*  
due.

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Paragraph deleted)*

- .1 Preconstruction services

**§ 11.1.8.2**

*(Paragraphs deleted)*

Not used.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8.

*(Paragraphs deleted)*

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 11.1.11 Omitted.

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

**§ 11.2 Final Payment**

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

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

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- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

*(Paragraph deleted)*

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

*(Paragraph deleted)*

**§ 11.3 Interest**

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

*(Paragraphs deleted)*

set in accordance with 62 OKL.ST.ANN. § 34.72. Interest on unpaid amounts shall not exceed ten percent (10%) per annum.

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

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

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

*(Paragraphs deleted)*

**ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

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

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

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

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

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

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

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

### § 13.2.1 Termination

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

### § 13.2.2 Termination by the Owner for Cause

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

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

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

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steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

*(Paragraphs deleted)*

### § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

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

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

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of two million dollars (\$2,000,000) for each occurrence and three million dollars (\$3,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of one million dollars (\$1,000,000) 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.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) each employee, and five hundred thousand dollars (\$500,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of five hundred thousand dollars (\$500,000) per claim and one million dollars (\$1,000,000) in the aggregate.



*(Table deleted)*

*(Paragraphs deleted)*

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

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

§ 14.3.1.9 The Construction Manager shall not be required to furnish performance or defects bonds covering performance of the Contract except as required by the Act or as permitted by the Construction Management for Political Subdivisions Act and agreed by the Owner and Construction Manager. The Construction Manager shall furnish a payment or fidelity bond covering payment of Contractors, Subcontractors and other obligations arising under the Contract. The Construction Manager shall ensure that all bonds required by the Act from trade contractors and subcontractors be issued as dual obligee bonds in favor of the Owner and the Construction Manager.

#### § 14.3.2 Construction Phase

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

### ARTICLE 15 OTHER PROVISIONS

#### § 15.1. Limitation of Liability

Except for claims, damages, losses, and expenses, including but not limited to attorneys' fees, covered by the insurance policies required to be maintained by the Construction Manager in accordance with this Agreement, the Construction Manager's liability to the Owner under this Agreement for any act, omission, breach of contract, or default shall not exceed the 150% of the Guaranteed Maximum Price. The Construction Manager's liability for claims, damages, losses, and expenses, including but not limited to attorneys' fees, covered by the insurance policies required to be maintained by the Construction Manager in accordance with this Agreement shall not exceed the amounts paid by the relevant insurance policy or policies.

#### § 15.2. Waiver of Consequential Damages

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EACH PARTY'S INDEMNIFICATION OBLIGATIONS FOR LIABILITIES TO THIRD PARTIES AS SET FORTH IN THIS AGREEMENT.**

### ARTICLE 16 SCOPE OF THE AGREEMENT

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

§ 16.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

# Non-Collusion Affidavit

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX

)  
)  
)  
)  
)  
)  
)

**PROJECT:** CMAR to Assist with Construction Management Services New Elementary School Construction at the site of Cotteral Elementary School, 2001 West Noble Avenue, Guthrie, Oklahoma.

Geoffrey A. Preisman, of lawful age, being first duly sworn, on oath states, he is the duly authorized agent of Centennial Contractors Enterprises, Inc., the Construction Manager under the contract which is attached to this statement, for the purpose of certifying the facts pertaining to the giving of things of value to government personnel in order to procure said Contract;

He is fully aware of the facts and circumstances surrounding the making of the Contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the procurement of said Contract; and,

Neither the Construction Manager nor anyone subject to the Construction Manager's direction or control has paid, given or donated or agreed to pay, give or donate to any office or employee of the Guthrie Public School District any money of other thing of value, either directly or indirectly, in procuring the Contract to which this statement is attached.

**CENTENNIAL CONTRACTORS ENTERPRISES, INC.**

By:

Geoffrey A. Preisman  
President and CEO

**Notary Public**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Signature of notarial officer

My Commission Expires:

My Commission Number:

(SEAL)

Init.

# Felony Affidavit

COMMONWEALTH OF VIRGINIA     )  
                                                          )  
COUNTY OF FAIRFAX            )  
                                                          )

**PROJECT:**        **CMAR to Assist with Construction Management Services New Elementary School Construction at the site of Cottler Elementary School, 2001 West Noble Avenue, Guthrie, Oklahoma.**

The undersigned, under the penalties of perjury, certifies to the Guthrie Public School District ("School District") as follows:

1.        The undersigned has a contract with the School District.
  
2.        The undersigned hereby certifies that neither the undersigned nor any employee of the undersigned or of the entity, or of any subcontractor of the undersigned or the entity, will perform work on School District premises on a full-time or part-time basis that would otherwise be performed by School District employees if such employee has been convicted in this State, the United States or any other state of any felony offense unless ten (10) years have elapsed since the date of the criminal conviction or the employee has received a pardon for the offense.
  
3.        Neither the undersigned nor any employee of the undersigned, or the entity, or of any subcontractor of the undersigned or the entity, who performs any work on School District property is currently registered under the *Oklahoma Sex Offenders Registration Act* or the *Mary Rippy Violent Crime Offenders Registration Act*.
  
4.        The undersigned, or the entity, has conducted a felony record search of all employees who will be assigned to work on a full-time or part-time basis on School District property.
  
5.        This Affidavit is made and delivered pursuant to the requirements of OKLA. STAT. tit. 70, § 6-101.48 (Supp. 2000) and OKLA. STAT. tit. 57, § 589 (Supp. 2004) (the "Acts"). The undersigned further certifies to the School District that the undersigned and/or the entity are in full compliance with the requirements of the Acts.

EXECUTED AND DELIVERED this \_\_\_\_ day of \_\_\_\_\_, 2022.

**CENTENNIAL CONTRACTORS ENTERPRISES, INC.**

By:  
      Geoffrey A. Preisman  
      President and CEO

**Notary Public**

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2022.

Signature of notarial officer

My Commission Expires:

My Commission Number:

(SEAL)

*(Table deleted)(Paragraphs deleted)(Paragraphs deleted)*

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# AIA<sup>®</sup> Document A201<sup>®</sup> – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

CMAR to Assist with Construction Management Services  
New Elementary School Construction at the site of  
Cottler Elementary School  
2001 West Noble Avenue  
Guthrie, Oklahoma 73044

### THE OWNER:

*(Name, legal status and address)*

Board of Education for Independent School District No. 1 of  
Logan County, Oklahoma  
a/k/a Guthrie Public Schools  
802 East Villas Avenue  
Guthrie, Oklahoma 73044

### THE ARCHITECT:

*(Name, legal status and address)*

The Stacy Group, Inc.  
Edmund Office  
222 East 10th Street Plaza  
Edmond, Oklahoma 73034  
Phone: (405) 330-8292

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### ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503<sup>™</sup>, Guide for Supplementary Conditions.

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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. It is the intent of the parties that the Contract Documents shall include, in addition to those documents set forth therein, all bidding documents, including bidding requirements, advertisements, instructions to bidders, together with 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 a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

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

### § 1.2 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.

§ 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.

§ 1.2.1.2 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Addenda, with those of later date having precedence over those of earlier date.
- .2 The Standard Form of Agreement between Owner and Contractor or Construction Manager.
- .3 The Supplemental Conditions.
- .4 The General Conditions of the Contract for Construction.
- .5 Drawings and Specifications.

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work and in any dispute arising from the execution of the Work. All copies made under this authorization that are not enlarged or cropped to show a specific detail or portion of a drawing sheet 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 identified in the Agreement, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

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### § 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, to establish the protocols for the development, use, transmission, and exchange of digital data. If no written protocol is established, the parties agree to the use, transmission, and exchange of files in a manner and form that's consistent with and common in the construction industry.

*(Paragraphs deleted)*

### § 1.8 Relationship of the Parties

Notwithstanding anything in this Agreement or under Oklahoma law, the Owner and Construction Manager agree the Construction Manager is proceeding under this Agreement at risk. The Owner and Construction Manager agree the Construction Manager is not an agent of the Owner and does not and will not represent the Owner in a fiduciary capacity.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Omitted.

§ 2.2.2 Omitted.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Omitted.

§ 2.2.5 Under no circumstances will the Owner or Architect direct the Contractor to proceed with Work prior to the funds for that Work having been obtained and appropriated by the Owner. If any employee, officer, or director of the Owner or the Architect directs such Work to be performed by the Contractor without appropriations having been made, the Owner is estopped from asserting the failure of the appropriation as a defense to paying the Contractor for the value of the Work performed.

### § 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of

information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.4 Owner's Right to Stop the Work

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

§ 2.4.1 The Owner's right to stop the Work shall not imply that the Owner or the Architect has any duty, obligation or responsibility to determine either the safety of the Contractors' means, methods, techniques or sequences, including but not limited to, temporary shoring, bracing, scaffolding, form work, safety barriers, trench bracing and other similar items, referred to herein as "Temporary Facilities", or their compliance with the requirements of the laws, codes, regulations and safety requirements, which shall be the full and sole responsibility of the Contractor who shall solely bear any damages or injury, including death, arising therefrom.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may reasonably require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, 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.

§ 3.2.5 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was reasonably available to the Contractor within the Contract Documents, 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 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.

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§ 3.4.2 After the Contract has been executed, the Owner and Architect will consider formal requests for the substitution of products in place of those specified only upon written request of the Contractor and in accordance with a Change Order. By making requests for substitutions based upon this Subparagraph, the Contractor represents and certifies that:

- .1 Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 Manufacturer will provide the same warranty for the substitution that the Manufacturer would for that specified;
- .3 the cost data presented is complete and includes all related costs under this Contract, except the Architect's redesign costs, and waives all claims for additional costs related to the substitution, which subsequently become apparent; and
- .4 Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Owner shall be entitled to deduct from the Contract Sum any amounts paid to the Architect to evaluate the Contractor's proposed substitutions and to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Owner is a political subdivision of the State of Oklahoma, exempt from sales and use taxes for the Work or portions thereof provided by the Contractor. The Owner shall, to the extent permitted by law, designate Contractor as an agent for purposes of these exemptions as more fully described elsewhere in the Contract Documents.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Should applicable laws, ordinances, statutes, standards, building codes, rules and regulations change between the bid date and commencement of the Work or during the progress of the Work, and should such change require the Contractor to perform either more or less work, the Contract Sum and Contract Time shall be appropriately adjusted in compliance with the requirements of Article 7, Changes in the Work.

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#### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

#### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

#### § 3.9 Project Superintendent

§ 3.9.1 The Contractor shall employ and shall designate in writing to the Architect and Owner, a competent project superintendent and any necessary assistants who shall be in attendance at the Project Site full-time during the performance of the Work. The project superintendent shall represent to Contractor as his agent, and communications given to the project superintendent shall be as binding as if given to the Contractor. Communications between the parties shall be confirmed in writing where such communications have a material effect upon the Work or where such confirmation is requested by other parties.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed project superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed project superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed project superintendent to whom the Owner or Architect has made reasonable and timely objection. Except when the project superintendent is no longer employed by the Contractor, the

Contractor shall not change the project superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified

materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Owner agrees that the Architect shall review Shop Drawings, Product Data, Samples, and similar submittals promptly and return them as approved, approved as noted, for revision and resubmittal, or rejected no later than 14 days after the Contractor submits such Shop Drawings, Product Data, Samples, and similar submittals. The Owner agrees that any delay by the Architect in returning Shop Drawings, Product Data, Samples, and similar submittals beyond 14 days is a basis for a day-for-day extension to the Contract Time.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof. Any portion of the Work which fails to conform to the requirements of the Contract Documents shall be corrected in compliance with Article 12, UNCOVERING AND CORRECTION OF WORK, and the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals shall not relieve the Contractor of his duty, obligation and responsibility to make any such required corrections. Specific attention in writing shall be defined as a letter submitted with the Shop Drawings, Product Data, Sample or similar submittal which shall contain the following phrase: "Your attention is directed to the following deviations from the requirements of the Contract Documents" followed by a detailed written listing of all such deviations.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions. Specific attention in writing shall be defined as a letter submitted with the Shop Drawings, Product Data, Sample or similar submittal which shall contain the following phrase: "Your attention is directed to the following revisions which are in addition to those revisions that you requested", followed by a detailed written listing of all such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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

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

§ 3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and two (2) re-submittals. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. Provided the Architect has acted reasonably and in good faith in reviewing the initial submittal and two (2) re-submittals, the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional re-submittals beyond the initial submittal and two (2) re-submittals.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. When accessing the Work in preparation and progress, the Owner and its representatives agree to follow the Contractor's site safety requirements, including attending a safety orientation before accessing the Work site. The Owner also agrees to require the Architect and the Architect's representatives follow the Contractor's site safety requirements, including attending a safety orientation, during and prior to accessing the Work site.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is



attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

*(Paragraph deleted)*

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

- .1 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for additional site visits made necessary solely by the fault or neglect of the Contractor.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed.

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However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

§ 5.2.1 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.2 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.3**

If the Owner or Architect asserts a reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contractor's proposed substitution shall include any proposed increase or decrease in the cost occasioned by such change. If accepted by the Owner and Architect, an appropriate change order shall be issued.

*(Paragraph deleted)*

**§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

*(Paragraphs deleted)*

§ 5.3.1 The Contractor shall indemnify and hold the Owner harmless from any and all claims, damages, losses and expenses, including but not limited to, attorney's fees, arising out of the Contractor's failure to bind a subcontractor to all the terms of the Contract Documents, or the Contractor's failure to ensure that the subcontractors bind each of their subcontractors to all the terms of the Contract Documents.

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

## § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of visibly apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of visibly apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not visibly apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

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## § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

## § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

§ 7.3.8 The amount of credit or addition for a change which results in a net increase or decrease in the Contract Sum shall be actual net cost as confirmed by the Architect to include a reasonable corresponding adjustment for overhead and profit. When both additions and credits are involved in a change, the overhead and net profit allowance shall be calculated on the basis of the net change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 Prior to final payment, all Construction Change Directives issued during the progress of the Work shall be converted into Change Orders and signed by the Contractor, Architect and Owner. Should the parties fail to agree with the determination made by the Architect concerning deductive adjustments in the Contract Sum and the Contract Time, or otherwise fail to reach agreements upon the deductive adjustments, that portion of the final payment which is affected by the dispute, if any, shall be withheld pending final judgment issued by a court of competent jurisdiction.

#### § 7.4 Minor Changes in the Work

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

#### § 7.5 Expediting Changes in the Work.

§ 7.5.1 Except as permitted in Subparagraph 7.5.2, the Contractor shall not proceed with changes in the Work authorized under Paragraphs 7.2 or 7.3 until receipt of the appropriate signed documents.

§ 7.5.2 It is recognized by the parties that, under certain circumstances, changes in the Work may delay or endanger the Work if not processed in an expeditious manner. Upon certification by the Architect that an unacceptable delay may be caused, or that the Work may be endangered, the Owner may authorize the Contractor to immediately proceed with a change in the Work. Such authorization shall be in writing, signed by the Owner and shall contain an estimated change in the Contract Sum or an estimated change in the Contract Time, as appropriate. The Contractor, upon receipt of Owner's preliminary authorization, shall proceed promptly with the change in the Work specified therein. Final determination of the changes in the Contract Sum and Contract Time shall be made in a reasonable time and Owner's preliminary authorization shall be converted into a Change Order or a Construction Change Directive, as the case may be, but with the changes in the Contract Sum and Contract Time based on the final determination of such changes.

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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

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## § 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 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 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

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and 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.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, but only to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, but only to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request reasonable written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 If the Contract Sum exceeds \$50,000, the Contractor shall furnish to the Owner a payment and performance bond with good and sufficient sureties payable to the Owner in a sum not less than the Contract Sum.

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

#### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding

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dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.1.1 All inspections required by federal, state or local regulatory authorities shall be complete and a certificate of occupancy shall be issued prior to the issuance of the Certificate of Substantial Completion.

§ 9.8.1.2 Should any regulatory inspection disclose any work performed by the Contractor which is not in compliance with the Contract Documents, the Contractor shall, prior to the issuance of the Certificate of Substantial Completion, complete or correct such Work. Should any regulatory inspection disclose any work performed by the Contractor that complies with the Contract Documents but not acceptable to the regulatory inspector, the Owner shall promptly issue a Change Order extending the Contract Time and increasing the Contract Sum to compensate Contractor for the delays and any rework necessary to satisfy the inspector. The Contractor shall then schedule another inspection by the appropriate regulatory authority and notify the Architect of the time and date of such reinspection.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete and after all regulatory inspections are complete and a Certificate of Occupancy is obtained, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Owner will not encourage or permit its Architect to delay any inspection of the Work or the preparation and issuance of the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Unless otherwise agreed upon in writing, the issuance of a Certificate of Substantial Completion shall not constitute acceptance of Work not in compliance with the requirements of the Contract Documents.

## § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have

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accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's project superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a 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 and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 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.

**§ 10.3.7** Contractor may not introduce asbestos-containing material into the Work.

**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or

insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

- .1 The Contractor shall require the sureties' attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current power of attorney.

§ 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 to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

*(Paragraphs deleted)*

§ 11.2 Omitted

§ 11.3 Omitted.

*(Paragraphs deleted)*

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

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

§11.5 **Adjustment and Settlement of Insured Loss**

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

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

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. The warranty obligations under this Section are the sole and exclusive remedy for the Owner arising from Work found to be not in accordance with the requirements of the Contract Documents.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

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

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. The laws of the State of Oklahoma shall apply and govern the enforcement and interpretation of the Contract.

### § 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. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make 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, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set in accordance with 62 OKL.ST.ANN. § 34.72.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

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- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

*(Paragraphs deleted)*

##### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

*(Paragraphs deleted)*

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in detail; the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. The Owner assumes an average number of weather related delays. The Owner assumes delays for permitting, inspections and material availability. Only delays beyond ordinary circumstances will be considered when evaluating claims for additional time.

*(Paragraphs deleted)*

§ 15.1.6.4 The Owner may consider concurrent and interrelated effects on the progress of the Work and concurrent delays due to the fault of the Contractor in evaluating the Contractor's request for an increase in Contract Time.

*(Paragraph deleted)*

**ARTICLE 16 EMPLOYEE CRIMINAL CONVICTIONS**

*(Paragraphs deleted)*

§ 16.1 The Contractor will not allow any employee of the Contractor or of any subcontractor to work on school premises during normal school hours if the employee is convicted in this state, the United States or another state of: (1) any sex offense subject to the Sex Offenders Registration Act of this state, similar law of another state, or the federal sex offender registration provisions; or (2) any felony offense, unless (a) the person is a volunteer or (b) the person is performing community service hours under court order or (c) the person is performing services under a supervised work release program or (d) ten (10) years have elapsed since the date of the criminal conviction or (e) the employee has received a Presidential or Gubernatorial pardon for the criminal offense.

*(Paragraph deleted)*

§ 16.2 As a condition to receiving progress payments on the contract sum, the Contractor will furnish with each application for payment a signed statement declaring that no employee working on school premises during normal school hours under the authority of the Contractor is in violation of the provisions of this Article. If this Contract does not provide for periodic payment against the Contract Sum, the signed statement referred to in this Section will be

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furnished as required from time to time by the Owner. The Owner's form of the signed statement will be used by the Contractor.

*(Paragraph deleted)*

§ 16.3 The Contractor agrees to obtain similar compliance statements from all subcontractors used by the Contractor on the Project with reference to employees of the subcontractors. No request for payment will be approved by the Contractor unless accompanied by the required compliance statements.

§ 16.4 The Contractor's conviction of a violation of 57 O.S. § 589 (1998 Supp.) shall constitute grounds for termination of the Contract. The foregoing provisions are intended to comply with Senate Bill 1394 of the Second Regular Session (1998) of the 46<sup>th</sup> Oklahoma Legislature. The Contractor is obligated to comply with the provisions of that Act, as may be interpreted or amended from time to time as if fully incorporated herein.

**MEMORANDUM:**

**TO:** Members of the Board of Education and Dr. Mike Simpson,  
Superintendent

**FROM:** Angie Young, Director of Special Education

**SUBJECT:** Professional Service Agreement with ProcCare, VocoVision to provide  
Occupational Therapy Services

**DATE:** August 12, 2022

Attached is an agreement with ProCare to provide Occupational Therapy services for Guthrie Public Schools during the 2022-2023 school year. This service will be provided virtually through the VocoVision Platform. All VocoVision computer equipment is provided by ProCare at no additional cost. A member of support staff will supervise the student during virtual assessments. This service is being provided for 15 hours per week at the rate of \$91/hour. The cost of this service is approximately \$49,000 will be paid for out of Special Education Federal Funds.

## CLIENT SERVICES AGREEMENT

ProCare Therapy, a d/b/a of New Direction Solutions, LLC ("ProCare") and  
Guthrie Public Schools whose principal location is  
802 E VILAS AVE Guthrie OK 73044 ("Client") enter into this non-exclusive  
 Client Services Agreement ("Agreement") for the purpose of referring and placing Consultants ("Consultants") with  
 Client. This Agreement shall govern the overall terms of the relationship, while a separate Client Assignment  
 Confirmation for each placement will outline specifics as to bill rates, personnel, and assignment lengths.

### 1. Scope of Services.

ProCare will use its commercially reasonable efforts to provide Consultants for assignment with Client. ProCare will be responsible for payment of each Consultant's wages and applicable payroll taxes, deductions, and insurance, including worker's compensation, general liability and professional liability coverage for the benefit of the Consultant s. If a Consultant is unable to complete the specified assignment, ProCare will use its commercially reasonable efforts to find a replacement in a timely manner.

### 2. Independent Contractor.

The parties hereto specify and intend that the relationship of each to the other is that of an independent contractor, that each Consultant shall be an employee of ProCare and that no qualified Consultant shall at any time be an employee of Client, unless the parties shall otherwise agree in writing. ProCare agrees to provide and maintain all payroll services for any qualified Consultant placed with Client, to maintain payroll records and to withhold and remit all payroll taxes and social security payments. ProCare does not ordinarily use subcontractors in providing services. Should the need to use a separate staffing firm or independent contractor arise, ProCare will notify Client in advance of the assignment in order to receive approval of this arrangement.

### 3. Telepractice Services.

ProCare, at Client's specific request, may provide telepractice services through VocoVision. Should utilization of VocoVision occur, Client shall, at that time, receive in addition to Addendum A – Client Assignment Confirmation, an Addendum B – Teleservices Provisions, Addendum C – Duties and Responsibilities and Addendum D –VocoVision Equipment Policies which, collectively, outline specific terms and conditions regarding VocoVision's telepractice services.

### 4. Insurance.

ProCare will maintain at least the following minimum amounts of insurance:

General Liability - \$2,000,000 per occurrence and \$4,000,000 aggregate.

Workers Compensation - in accordance with state regulations.

Employer's Liability - \$1,000,000.

Excess Liability over General Liability and Employer's Liability - \$5,000,000 per occurrence and \$5,000,000 aggregate.

Professional Liability - \$1,000,000 per occurrence and \$3,000,000 aggregate.

Sexual Abuse and Molestation - \$1,000,000 per occurrence and \$3,000,000 aggregate

### 5. Competency and Licensing.

ProCare will conduct comprehensive pre-employment screening to provide licensed Consultants who meet applicable professional standards. ProCare will endeavor to present only Consultants who are qualified for Client's open position(s) on job requirements established by Client either verbally or in writing. While ProCare will make every effort to pre-screen job candidates based on these requirements, Client acknowledges the candidate assignment decision is ultimately the responsibility of the Client. To this end, ProCare will make available to Client all appropriate Consultant records that ProCare may permissibly disclose and will facilitate an interview between Client and Consultant in order to assist Client in the hiring decision. ProCare will do its due diligence to ascertain the professional and applicable Department of Education licensing and certification requirements for the Consultant discipline placed with Client, however, it is ultimately the responsibility of the Client to approve the Consultant's licensure and certifications as acceptable.

**6. On-Site Responsibility.**

Client is responsible for providing all support, facilities, training, direction, materials, supplies, and means for the Consultant to complete the assignment. Client acknowledges that ProCare is not providing nursing or healthcare services, but rather is providing candidate identification and placement services. As such, Client is responsible for the Consultant's adherence to the applicable standard of care and acknowledges that ProCare is not responsible for the Consultant's on-site performance. Client warrants that its facilities and operations will comply at all times with all federal, state and local safety and health laws, regulations and standards, including OSHA standards, and that Client will be responsible for providing all safety training and equipment, and for each Consultant's compliance with health and safety requirements, including those instituted by Client.

**7. Employment of Consultants.**

Client agrees that it will not directly or indirectly, personally or through an agent or agency, contract with or employ any Consultant introduced or referred by ProCare for a period of (12) months after the latest date of introduction, referral, placement, or termination or expiration of the contract assignment. If Client or its affiliate enters into such a relationship or refers Consultant to a third party for employment, Client agrees to pay an amount equal to \$22,500 or thirty-five (35) percent (whichever is greater) of the Consultant's first year's annual salary, including any signing bonus, as agreed upon at the time of hiring. Payment is due and payable to ProCare upon start date.

**8. Equal Opportunity.**

It is the policy of ProCare to provide equal opportunity to all Consultants for employment. ProCare and Client will screen based on merit only. All Consultants will be free from discrimination due to race, religion, color, sex, national origin, age, or disability.

**9. Timekeeping and Invoicing.**

Client will ensure that Consultants accurately record the start and stop times for all hours worked, in accordance with the Client's policies utilizing the Client designated method which may include the submission of ProCare's timesheet. Timesheets are due weekly by 12:00 PM on the Monday following the end of Client's designated workweek.

ProCare will generate an invoice for Client based on timesheets submitted. Client must review the invoice and notify ProCare of any errors, including billed hours or improper rates, immediately and in writing. Invoicing errors not received within thirty (30) days of the date of invoice shall not be disputed and invoices will be due in full.

**10. Payment Terms.**

Client will be billed on a weekly basis for work performed during the previous week and pay ProCare based on the service charges specified in the Assignment Confirmation included as an addendum to this Agreement. All hours worked over forty (40) hours in a one-week work period will be billed at one and one-half times the regular bill rate. It is Client's responsibility to notify ProCare if pre-approval is required for any or all overtime hours prior to any such hours being worked. **Payment is due within fifteen (15) days of receipt of invoice.**

**11. Default Charges.**

Invoices shall be considered past due if not paid by the agreed-upon due date. Client agrees to pay all necessary collection costs of amounts past due, including reasonable attorney's fees and costs. Additionally, ProCare reserves the right to approve or to discontinue any extension of credit and the terms governing such credit.

**12. Limitation of Liability.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER WHATSOEVER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS, LOST DATA, LOSS OF USE OF DATA, OR LOST OPPORTUNITY, WHETHER OR NOT PLACED ON NOTICE OF ANY SUCH ALLEGED DAMAGES AND REGARDLESS OF THE FORM OF ACTION IN WHICH SUCH DAMAGES MAY BE SOUGHT. THE FEES AND BILLINGS DUE UNDER THIS AGREEMENT ARE NOT CONSIDERED SPECIAL DAMAGES OR LOST PROFITS AND SHALL NOT BE LIMITED BY THESE PROVISIONS.

**13. Administrative Responsibilities.**

Client shall be responsible for orienting Consultant to Client's policies and procedures regarding the submission of any requisite paperwork which must be tendered for reimbursement by funding entities such as Medicare, Medicaid, or health insurance. Such paperwork may include, but is not limited to, patient care plans, comprehensive patient histories, individual education plans, or Client specific program plans. During the contracted assignment, should Consultant fail to submit paperwork as required per Client's policies and procedures, Client must notify ProCare in writing within three (3) business days of alleged failure. Failure to notify ProCare before assignment ends shall negate any Client claim to withhold payment due to untimely work and/or paperwork non-compliance by Consultant.

Client agrees that all approved time sheets by Client's assigned representative are not subjected to billing dispute if Client fails to notify ProCare of time sheet and work performed discrepancies.

**14. Incident and Error Tracking.**

Client will report to ProCare any performance issues, incidents, errors and other events related to the care and services provided by ProCare Consultants. ProCare will document reported incidents in Consultant's personnel file and track all such events for quality assurance purposes. All supporting documentation is required within seventy-two (72) hours of the occurrence.

**15. Reporting of Work-Related Injuries.**

Client will maintain a safe working environment and provide all appropriate personal protective equipment as deemed appropriate for unit to which ProCare's Consultant has been assigned. Client ensures compliance with all applicable OSHA or state Department of Labor obligations to include general training on the reporting of work-place injuries, incidents, and occupational exposure to bloodborne pathogens occurring at Client facility. Records of such occurrences must be maintained by the Client and accessible to ProCare within guidelines set forth by governing entities. In the event of work-place injury, incident or exposure, each affected Consultant will contact their immediate Client-appointed supervisor and report to the applicable treating department as per Client protocol. Consultant shall also report work-place injury, incident or exposure to ProCare concurrently with Client for the purpose of reporting such event to ProCare's workers compensation carrier. If ProCare's Consultants are not eligible for treatment of work-place injury, incident or exposure by Client or if reporting requirements change during the term of this Agreement, Client is responsible for written notification of such information to both ProCare and ProCare's Consultant.

**16. Termination of Contracted Assignment with Cause.**

Immediately upon occurrence, Client has the obligation to report each deviation from the accepted standard of practice, policies and procedures as orientated to Consultant, behavior, and or any incident that would be considered adverse to the overall operation of Client. Client may request that ProCare facilitate the immediate removal of Consultant due to any of the issues preceding with written and/or verbal notice. The Client, however, may not immediately terminate a Consultant unless ProCare has been notified prior to final incident or unless a single incident warrants immediate dismissal prior to ProCare's notification. All supporting documentation specifying the reasons and facts of the termination is required within forty-eight (48) hours of termination. If the Client does not report such deviation(s) and subsequently terminates Consultant or if Client does not provide required documentation following a termination within the required timeframe, Client will be assessed as liquidated damages and not as a penalty, an amount equal to one (1) week of billing. The parties agree that ProCare's Consultants are an integral part of its operation and a resource that may have been developed over a number of years. Any delay or absence of a written and verbal notice could result in lost revenue or other consequences not foreseen at this time and therefore the liquidated damages are not unreasonable to the probable loss to be suffered by ProCare in the event of your breach of this provision. Client will be responsible for all professional fees (and expenses if applicable) up to the point of termination. Termination with cause must be documented prior to termination in accordance with the Incident and Error Tracking procedures set forth in paragraph 14 of this agreement. ProCare shall have five (5) business days to refill the position in the event of termination with cause. Should ProCare identify a suitable Consultant, Client agrees to original terms or extended terms of the terminated Consultants assignment.

**17. Termination of Contracted Assignment without Cause.**

Client may cancel an assignment with thirty (30) days written notice. Client is responsible for all charges and fees prior to cancellation date and through the 30-day period of notice. In the event Client is unable to provide thirty (30) days' notice of termination, Client will be billed for thirty (30) days at the agreed upon regular bill rate and minimum hours. In the event of termination without cause, Client will be responsible for any housing and travel costs actually incurred by ProCare as a result of such cancellation.

**18. Guaranteed Minimum Hours.**

Client agrees to provide Consultant the guaranteed number of work hours per week specified in the attached Assignment Confirmation Addendum A. Cancellation of prescheduled shift(s) or reduction in work hours by Client will be billed reflecting the guaranteed minimum work hours.

**19. Paid Sick Leave.**

For those jurisdictions that have passed or will pass legislation requiring Paid Sick Leave, Paid Sick Time will be billed back to Client at the straight-time bill rate for all hours taken by any Consultant assigned to Client. This section is not applicable until the effective date of such legislation has been reached.



**20. Unscheduled Facility Closure Policy.**

ProCare will incur fixed expenses over the entire course of a Consultant's contract assignment with Client related to the Consultant's housing and per diem costs. The parties agree that in the event of an unforeseen or unexpected interruption in a Consultant's assignment resulting from an unscheduled closure, complete or partial, of Client's facilities due to natural or manmade disasters, such as, and without limiting the generality of the foregoing, fire, storms, flooding, earthquake, labor unrest, riots, and/or acts of terrorism or war (each an "Unscheduled Closure"), Client will transition to virtual services for all Consultants whose services can be performed in such a setting. Client shall be billed for services performed at the regular contracted hourly bill rate for all hours worked by Consultant. Virtual service hours shall be entered and processed according to the normal time submittal and approval process unless otherwise requested by Client and agreed upon by ProCare. ProCare and Client will mutually determine which contracted disciplines qualify for virtual services. For contracted services not eligible for virtual services, Client will be invoiced and shall pay for each such affected Consultant's services at the reduced rate of \$200 per day for each day that the Consultant(s) is unable to work by virtue of such Unscheduled Closure.

**21. Multiple Locations.**

If client requires Consultant to travel to and perform services at more than one location, Client will compensate ProCare for travel time between facilities at the regular hourly bill rate and for mileage up to the current acceptable IRS reimbursement rate.

**22. Issue Resolution.**

In the event Client encounters an issue that is not satisfactorily resolved by its ProCare representative, Client should escalate the issue to the appropriate ProCare manager by calling: 800-825-7133. Please ask for your account representative's manager.

**23. Indemnification.**

Each party will indemnify, defend and hold harmless the other against third party claims arising from breaches of the parties' respective obligations under this Agreement.

**24. Confidentiality.**

Each party acknowledges that as a result of this Agreement, they will learn confidential information of the other party. Confidential information is defined as that information which is private to each party but is shared by one to the other party as required to accomplish this Agreement and **includes bill rates, fees for permanent placements and terms and conditions of this Agreement.** It is agreed that neither party will disclose any confidential information of the other party to any person or entity. Neither will it permit any person nor entity to use said confidential information.

Disclosures required by law including properly executed Freedom of Information Act requests and information shared to the appropriate individuals within the respective organizations as necessary to execute this Agreement shall be the only exceptions permitted under this Agreement.

Confidential Information of ProCare shall include, but is not limited to, any and all unpublished information owned or controlled by ProCare and/or its Consultants, that relates to the clinical, technical, marketing, business or financial operations of ProCare and which is not generally disclosed to the public including but not limited to Consultant information, technical data, policies, financial data and information to include contract terms and provisions, billing rates, permanent placement fees whether disclosed orally, in writing or by inspection. If the receiving party shall attempt to use or dispose of any of the Confidential Information, or any duplication or modification thereof, in any manner contrary to the terms of the foregoing, the disclosing party shall have the right, in addition to such other remedies which may be available to it, to obtain an injunctive relief enjoining such acts or attempts as a court of competent jurisdiction may grant, it being acknowledged that legal remedies are inadequate.

**25. Family Education Rights and Privacy Act.**

ProCare shall comply with all laws, rules and regulations pursuant to the Family Educational Rights and Privacy Act, 20 USC 1232g ("FERPA") and acknowledges that certain information about the Client's students is contained in records maintained by ProCare and the Consultant and that this information can be confidential by reason of FERPA and related Client policies. Both parties agree to protect these records in accordance with FERPA and Client policy. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. As it applies, Consultants assigned to Client will execute a FERPA Statement of Understanding outlining appropriate guidelines.

**26. State Retirement System Notice.**

Client acknowledges and agrees that if formal notice is required to be given to any Consultant that participation in any

such retirement system/pension is either: 1) permitted by Consultant's election; or 2) is required by law, then Client is solely responsible for providing such notice to Consultant s and fulfilling all associated administrative duties. Client shall immediately notify ProCare if any Consultant is required to, or voluntarily elects to participate in any such system. In such event, Client shall advise ProCare of the withholding obligation percentages (both employer and employee share) so that invoices to Client and payment to the Consultant may be adjusted accordingly. The parties agree that Client shall withhold and pay to the retirement/pension both the employee and employer shares. The parties agree that the applicable employee and employer shares paid to the system by the Client shall be deducted from the amount owed to ProCare by the Client hereunder. The parties agree that the applicable employee share paid to the system by the Client shall be deducted from the amount due the Consultant by ProCare. The Client and ProCare expressly acknowledge and agree that if any Consultant is required to, or elects to participate in a retirement system/pension, the Client shall be solely responsible for: 1) creating an account for Consultant with the appropriate retirement system/pension; 2) all present and/or future obligations to make employee and employer cash payments/ contributions to the retirement system/pension as required by law and/or set by the retirement system/pension; and 3) otherwise administering all employer functions pertaining to the Consultant's interest in retirement system/pension.

**27. Conflicts of Interest.**

The parties acknowledge their respective obligation to report any conflict of interest and/or apparent conflict of interest that may interfere with their ability to perform their obligations hereunder objectively and effectively. To that end, the Parties hereby certify and represent that their officials, employees and agents do not have any significant financial or other pecuniary interest in the other party's business enterprise, and that no inducements of monetary or other value were offered or given to any officer, employee or agent of the other party. Each party agrees to promptly notify the other in the event it becomes aware of any conflict of interest or apparent conflict of interest.

**27. Notices.**

All notices required to be given in writing will be sent to the names/addresses listed below.

**ProCare Therapy**  
Contract Department  
5550 Peachtree Parkway  
Suite 500  
Peachtree Corners, GA 30092  
[ContractDepartment@procaretherapy.com](mailto:ContractDepartment@procaretherapy.com)

**To Client**  
Attention:  
Address:  
  
Email:

With a copy to:  
General Counsel  
[ContractNotices@procaretherapy.com](mailto:ContractNotices@procaretherapy.com)

With a copy to:  
Attention:  
Address:  
  
Email:

**28. Survival.**

The parties' obligations under this Agreement which by their nature continue beyond termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.

**29. Governing Law.**

This Agreement shall be governed by the laws of the state of Delaware.

**30. Modification of Agreement.**

This Agreement may not be modified, amended, suspended, or waived, except by the mutual written agreement of the Parties who are authorized to execute the agreement.

**31. Entire Agreement.**

This Agreement represents the entire agreement between the parties and supersedes any prior understandings or agreements whether written or oral between the parties respecting the subject matter herein. This Agreement may only be amended in a writing specifically referencing this provision and executed by both parties. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, subject to the limitations contained herein. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal and



shall be subject to reformation to the extent possible to best express the original intent of the parties. This Agreement and attached Assignment Confirmation contain terms that may only be altered when agreed upon in writing by both parties.

***This Agreement and attached Assignment Confirmation contain terms that may only be altered when agreed upon in writing by both parties.***

Guthrie Public Schools

Client Name

NEW DIRECTION SOLUTIONS, LLC dba  
PROCARE THERAPY

Client Representative Signature

Date

ProCare Representative Signature

Date

Angie Young

Print Name

Print Name

Title

Title



### CONTACT AND INFORMATION SUMMARY

#### CLIENT

School, District or Business Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Contact Name to Receive Invoice: \_\_\_\_\_

Invoice Email: \_\_\_\_\_

Invoice Email CC, if applicable: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

In an effort to increase efficiency for our Clients, Procare Therapy will email service invoices. Should you wish to opt out of this process, please check here

Invoice Follow-up Contact: Name: \_\_\_\_\_

same as above Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Payment Inquiry Contact: Name: \_\_\_\_\_

same as above Email: \_\_\_\_\_

Phone: \_\_\_\_\_

#### PROCARE THERAPY

**Correspondence Address**

*Correspondence, Contracts, Contract Addendums, Notices, etc.*

**5550 Peachtree Parkway, Suite 500**  
**Peachtree Corners, GA 30092**  
 Fax Number: **877-831-8511**

**Remittance Address**

*Only payments should be sent to this address*

**PO Box 934411**  
**Atlanta, GA 31193-4411**

**Account Representatives**

Name: Lauren Crawford

Email: lauren.crawford@vocovision.com

Telephone: 904-525-8907

**Billing Disputes, Purchase Orders, W-9 Requests**

Email: billing@procaretherapy.com

Fax: 877-831-8511



**ADDENDUM A  
Terms of Teleservices Assignment**

This Terms of Teleservices Assignment is subject to the terms and conditions of that certain Client Services Agreement between the parties outlined below.

**Assignment Details**

New Direction Solutions, LLC dba ProCare Therapy LLC will contract with VocoVision for the provisions of telepractice services to Client. Client will pay ProCare Therapy LLC for the hours worked by Telepractitioner under the following terms:

<b>Telepractitioner:</b>	Kelly McCollum		
<b>Client:</b>	Guthrie Public Schools		
<b>Assignment Start Date:</b>	8-22-22	<b>Assignment End Date:</b>	5-26-23
<b>Position:</b>	OT		
<b>Hours per Week:</b>	15		
<b>Bill Rate per Hour</b>	\$ 91	<i>Bill Rate is all-inclusive<sup>(a)</sup></i>	
<b>Technology Fee:</b>	\$ 0		

One VocoVision station per full time position at no cost. Additional stations can be provided with a \$1,000 per unit refundable deposit and \$200 per unit nonrefundable configuration and shipping charge. Deposit will be refunded to the school district upon return of the station(s) in working condition within fifteen (15) days of the assignment being completed.

**Miscellaneous:** Not Applicable

- a) Sales tax will be added to professional fees if required by state law and client is not a tax-exempt entity.
- b) Client agrees that it will not directly or indirectly, personally or through an agent or agency, contract with or employ any Consultant introduced or referred by ProCare Therapy or VocoVision for a period of (24) months after the last date Client received Services from such Consultant. If Client or its affiliate enters into such a relationship or refers Consultant to a third party for employment, Client agrees to pay an amount equal to first year's total compensation including but not limited to a signing and/or relocation bonus, as agreed upon at the time of hiring. Payment is due and payable to ProCare Therapy upon start date.
- c) Client agrees to approve Telepractitioner's weekly log of service. Logs will be submitted on a weekly basis by Telepractitioner for Client's review and approval. Should Telepractitioner fail to submit paperwork or weekly log to show proof of completed work, Client agrees to notify ProCare Therapy in writing within three (3) business days of alleged failure. Client's failure to notify ProCare Therapy in writing within three (3) days period shall negate any Client invoicing dispute.

**Guthrie Public Schools**

**PROCARE THERAPY**

\_\_\_\_\_  
Client Representative Signature Date

DocuSigned by:  
  
 \_\_\_\_\_  
 ProCare Representative Signature Date 8/5/2022

Angie Young  
\_\_\_\_\_  
Print Name

Lauren Crawford  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Vocovision Business Developer  
\_\_\_\_\_  
Title



## ADDENDUM B Teleservices Provisions

**Client Responsibilities.** Client agrees to the following items to facilitate VocoVision's provision of Services:

- (a) Client shall be responsible for providing a secure environment for VocoVision hardware and software ("Equipment") installed and operated at Client's designated location(s).
- (b) Client will provide sufficient infrastructure to support the proper operation of the Equipment, including network connectivity equal or superior to DSL access.
- (c) Client warrants that its facilities and operations will comply at all times with all federal, state and local safety and health laws, regulations and standards.
- (d) Client warrants that it will not use the Equipment for any purpose other than as contemplated hereunder, and acknowledges that VocoVision is not responsible for any damages associated with such impermissible use.
- (e) Client agrees to provide appropriate local support to facilitate remote Telepractitioner's ability to fulfill the responsibilities outlined in Addendum C: Duties and Responsibilities.

**Scheduling.** Client agrees to the minimum hours of Services per week as stipulated in Addendum A: Terms of Teleservices Assignment, and will schedule the appropriate number of student speech sessions and other related services each week to meet or exceed the minimum hours requirement. Client and telepractitioner will agree upon a weekly schedule for Services which will be loaded into the VocoVision system. Any revisions to the schedule must be submitted to the VocoVision Operations Department no later than 12:00 PM EST Friday for Services the following week. VocoVision requires a 24-hour notice to cancel scheduled Services. One cancellation without notice is permitted per school year. Additional cancellations with less than 24 hours' notice will be billed at the regular rate. Note that VocoVision telepractitioners are encouraged to complete non-therapy work (e.g., paperwork, planning, file reviews, etc.) during any such cancellation time.

**Administrative Responsibilities.** Client shall be responsible for orienting telepractitioners to Client's policies and procedures regarding the submission of any requisite paperwork which must be tendered for reimbursement by funding entities such as Medicare, Medicaid, or health insurance. Such paperwork may include, but is not limited to individual education plans or Client-specific program plans. During the contracted assignment, should telepractitioners fail to submit paperwork as required per Client's policies and procedures, Client must notify VocoVision in writing within three (3) business days of alleged failure. Failure to notify VocoVision within the three (3) day period shall negate any Client claim to withhold payment due to paperwork non-compliance by telepractitioners. Within three (3) business days following the conclusion of a contracted assignment, Client shall conduct a final review to determine whether the completion of additional paperwork is needed from the telepractitioners. Failure to notify VocoVision prior to the fourth (4th) day after conclusion of the assignment will negate any Client claim to withhold payment due to paperwork non-compliance by telepractitioner.

### Guthrie Public Schools

### PROCARE THERAPY

Client Representative Signature

Date

Angie Young

Print Name

Title

DocuSigned by:

*Lauren Crawford*  
ProCare Representative Signature

8/5/2022

Date

Lauren Crawford

Print Name

Vocovision Business Developer

Title



**ADDENDUM C  
Duties and Responsibilities**

**Duties and Responsibilities**

The duties and responsibilities of a Telepractitioner include, but are not limited to the following:

- Collaborates with the school district to identify students' communication characteristics, support resources, as well as any physical, sensory, cognitive, behavioral and motivational needs to determine the benefit a student may receive through telepractice.
- Collaborates with the school district to determine assessment resources - including their potential benefits and limitations - in the telepractice setting, and to develop a plan to assess students appropriately.
- Monitors effectiveness of services and modifies evaluation and treatment plans as needed.
- Maintains appropriate documentation of delivered services in a format consistent with professional standards and client requirements.
- Complies with state and federal regulations to maintain student privacy and security.
- Facilitates behavior management strategies in students as appropriate.
- Provides information and counseling to families and school personnel as needed

**Guthrie Public Schools**

**PROCARE THERAPY**

\_\_\_\_\_  
Client Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Angie Young

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

DocuSigned by:  
*Lauren Crawford* 8/5/2022  
\_\_\_\_\_  
ProCare Representative Signature Date

\_\_\_\_\_  
Lauren Crawford

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Vocovision Business Developer

\_\_\_\_\_  
Title



**ADDENDUM D  
VocoVision Equipment Policies**

**VocoVision Damaged Equipment Policy**

If, during the course of contracted services, VocoVision computer equipment sustains damage or is missing components (keyboard, audio accessories, etc.), it should be reported immediately to the VocoVision Operations Department at 1-866-779-7005. Replacement equipment will be shipped to Client as needed. The costs of repairing or replacing the equipment (including shipping) will be charged to Client, but in no case shall exceed \$1,000 per unit.

At the end of the VocoVision contract period, all equipment must be returned in original packaging within 15 days of completion of services. All returned equipment will be inspected for both physical and internal damage. If equipment is found to be damaged, VocoVision reserves the right to withhold from Client deposit the cost of repairing or replacing the damaged equipment. If no Client deposit exists, VocoVision will bill Client for such charges and will provide supporting documentation of all costs.

**Please initial**

**Packaging**

All packaging, boxes and containers used to ship VocoVision equipment are considered property of VocoVision and must not be discarded. Packaging should be stored and kept in good condition during the course of the contract and must be used for return shipping at the conclusion of services. If VocoVision packaging is lost or damaged, Client is solely responsible for obtaining replacement packaging to ensure undamaged return of equipment to VocoVision. In such cases, we strongly recommend the use of a professional packaging and shipping service, such as the UPS Store or a FedEx retail location.

**Please initial**



**MEMORANDUM:**

**TO:** Members of the Board of Education and Dr. Mike Simpson,  
Superintendent

**FROM:** Angie Young, Director of Special Education

**SUBJECT:** Professional Service Agreement with ProCare, VocoVision to provide virtual  
School Psychology Services

**DATE:** August 12, 2022

Attached is an agreement with ProCare to provide virtual School Psychology services for Guthrie Public Schools during the 2022-2023 school year. This service will be provided virtually through the VocoVision Platform. All VocoVision computer equipment is provided by ProCare at no additional cost. A member of support staff will supervise the student during virtual services and assessments. This service is being provided for 20 hours per week at the rate of \$89/hour. The cost of this service will be approximately \$64,000. These services will be paid for through the OSDE Counselor Corps Grant and ESSER funds. This contract may be terminated with 30 days written notice if the delivery type does not meet the district's needs.



# ADDENDUM A Terms of Teleservices Assignment

This Terms of Teleservices Assignment is subject to the terms and conditions of that certain Client Services Agreement between the parties outlined below.

### Assignment Details

New Direction Solutions, LLC dba ProCare Therapy LLC will contract with VocoVision for the provisions of telepractice services to Client. Client will pay ProCare Therapy LLC for the hours worked by Telepractitioner under the following terms:

<b>Telepractitioner:</b>	Cynthia Burleson	
<b>Client:</b>	Guthrie Public Schools	
<b>Assignment Start Date:</b>	8-29-22	<b>Assignment End Date:</b> 5-26-23
<b>Position:</b>	PSYCH	
<b>Hours per Week:</b>	20	
<b>Bill Rate per Hour</b>	\$ 89	<i>Bill Rate is all-inclusive<sup>(a)</sup></i>
<b>Technology Fee:</b>	\$ n/a	

One VocoVision station per full time position at no cost. Additional stations can be provided with a \$1,000 per unit refundable deposit and \$200 per unit nonrefundable configuration and shipping charge. Deposit will be refunded to the school district upon return of the station(s) in working condition within fifteen (15) days of the assignment being completed.

**Miscellaneous:** Not Applicable

- a) Sales tax will be added to professional fees if required by state law and client is not a tax-exempt entity.
- b) Client agrees that it will not directly or indirectly, personally or through an agent or agency, contract with or employ any Consultant introduced or referred by ProCare Therapy or VocoVision for a period of (24) months after the last date Client received Services from such Consultant. If Client or its affiliate enters into such a relationship or refers Consultant to a third party for employment, Client agrees to pay an amount equal to first year's total compensation including but not limited to a signing and/or relocation bonus, as agreed upon at the time of hiring. Payment is due and payable to ProCare Therapy upon start date.
- c) Client agrees to approve Telepractitioner's weekly log of service. Logs will be submitted on a weekly basis by Telepractitioner for Client's review and approval. Should Telepractitioner fail to submit paperwork or weekly log to show proof of completed work, Client agrees to notify ProCare Therapy in writing within three (3) business days of alleged failure. Client's failure to notify ProCare Therapy in writing within three (3) days period shall negate any Client invoicing dispute.

### Guthrie Public Schools

### PROCARE THERAPY

\_\_\_\_\_  
Client Representative Signature Date

DocuSigned by:  
*Lauren Crawford* 8/12/2022  
\_\_\_\_\_  
ProCare Representative Signature Date

Angie Young  
\_\_\_\_\_  
Print Name

Lauren Crawford  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Vocovision Business Developer  
\_\_\_\_\_  
Title





**ADDENDUM C  
Duties and Responsibilities**

**Duties and Responsibilities**

The duties and responsibilities of a Telepractitioner include, but are not limited to the following:

- Collaborates with the school district to identify students' communication characteristics, support resources, as well as any physical, sensory, cognitive, behavioral and motivational needs to determine the benefit a student may receive through telepractice.
- Collaborates with the school district to determine assessment resources - including their potential benefits and limitations - in the telepractice setting, and to develop a plan to assess students appropriately.
- Monitors effectiveness of services and modifies evaluation and treatment plans as needed.
- Maintains appropriate documentation of delivered services in a format consistent with professional standards and client requirements.
- Complies with state and federal regulations to maintain student privacy and security.
- Facilitates behavior management strategies in students as appropriate.
- Provides information and counseling to families and school personnel as needed

**Guthrie Public Schools**

**PROCARE THERAPY**

\_\_\_\_\_  
Client Representative Signature

\_\_\_\_\_  
Date

Angie Young

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

DocuSigned by:

*Lauren Crawford*

8/12/2022

\_\_\_\_\_  
ProCare Representative Signature

\_\_\_\_\_  
Date

Lauren Crawford

\_\_\_\_\_  
Print Name

Vocovision Business Developer

\_\_\_\_\_  
Title



**ADDENDUM D  
VocoVision Equipment Policies**

**VocoVision Damaged Equipment Policy**

If, during the course of contracted services, VocoVision computer equipment sustains damage or is missing components (keyboard, audio accessories, etc.), it should be reported immediately to the VocoVision Operations Department at 1-866-779-7005. Replacement equipment will be shipped to Client as needed. The costs of repairing or replacing the equipment (including shipping) will be charged to Client, but in no case shall exceed \$1,000 per unit.

At the end of the VocoVision contract period, all equipment must be returned in original packaging within 15 days of completion of services. All returned equipment will be inspected for both physical and internal damage. If equipment is found to be damaged, VocoVision reserves the right to withhold from Client deposit the cost of repairing or replacing the damaged equipment. If no Client deposit exists, VocoVision will bill Client for such charges and will provide supporting documentation of all costs.

**Please initial**

**Packaging**

All packaging, boxes and containers used to ship VocoVision equipment are considered property of VocoVision and must not be discarded. Packaging should be stored and kept in good condition during the course of the contract and must be used for return shipping at the conclusion of services. If VocoVision packaging is lost or damaged, Client is solely responsible for obtaining replacement packaging to ensure undamaged return of equipment to VocoVision. In such cases, we strongly recommend the use of a professional packaging and shipping service, such as the UPS Store or a FedEx retail location.

**Please initial**



**Board of Education Personnel Reports  
August 16, 2022**

**Employment Request**

<u>Classification Certified</u> Name	Site	Teaching Assignment	First Work Day	Hrs. Per Day	Replacing
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<u>Classification Support</u> Name	Site	Assignment	First Work Day	Pay Grade	Hrs. Per Day	Replacing
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Carroll, Teri	Junior High	SpEd. Para	08-15-22	6	7.5	Jennifer Nelson
Holcomb, Joy	GUES	Caf. Worker	08-15-22	2	7	Sean Burgess
Paulson, Amanda	Junior High	Caf. Worker	08-15-22	2	6	Alicia Hernandez
Rodriguez, Gloria	HS/Central	Custodian	08-15-22	3	8	Glenda Arnold
Stovall, Teri	HS	SpEd. Para	08-15-22	6	7.5	Sandra Norton
Thurston-Howell, Jenifer	GUES	Custodian	08-15-22	3	8	Ruby Morrow

**Transfer of Position Report**

<u>Classification Certified</u> Name	Transferred From	Transferred To	Replacing
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<u>Classification Classified</u> Name	Transferred From	Transferred To	Replacing
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Weeks, Alicia	JH – Caf. Worker	JH – Caf. Manager	Amy Grandstaff
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**Separation of Employment**

<u>Classification Certified</u> Name	Site	Teaching Assignment	Reason for Separation	Effective Date
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Grayson, Chellie	CO	SpEd Mild/Mod	resignation	08-01-22
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<u>Classification Classified</u> Name	Site	Position	Reason for Separation	Effective Date
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Grandstaff, Amy	JH	Caf. Manager	resignation	08-11-22
Graves, Harley	HS	SpEd Para	resignation	08-04-22
Hernandez, Alicia	JH	Caf. Worker	resignation	08-05-22
Hoel, Miranda	HS	Caf. Worker	resignation	08-04-22
Lawson, Camryn	GUES	Para for Indv.Student	resignation	08-08-22
Mason, Christopher	Transportation	Rte. Driver	resignation	08-08-22
Snelling, Melissa	Transportation	Rte. Driver	resignation	08-08-22

MORGAN, SAM	Basketball Assistant Coach Girls HS	705	\$2700.00
VOLKERT, TRISTAN	Special Education Supervision 1st Sem.	705	\$450.00
VOLKERT, TRISTAN	Special Education Supervision 2nd Sem.	705	\$450.00