

DOUGLAS SCHOOL DISTRICT  
BOARD OF EDUCATION

**AGENDA**

**Monday, August 8, 2022**

**VANDENBERG ELEMENTARY SCHOOL - Library Conference Room  
561 Briggs Street  
Box Elder, SD 57719**

**5:00 PM**

DOUGLAS SCHOOL DISTRICT INVITES YOU TO ATTEND A SCHEDULED ZOOM ROOM MEETING:

Join Zoom

Meeting: <https://sdk12.zoom.us/j/94556447399?pwd=b0F1R05NZ2lzQkhTa1c0YUFvM056QT09>

Meeting ID: 945 5644 7399

Passcode: 853722

1. Call Meeting To Order:
2. Pledge of Allegiance and Moment of Silence In Honor Of Fallen Soldiers And Active Duty Persons:
3. Recognition:
4. Public Forum:
5. Approval of Agenda:
6. Consent Agenda Items:
  - A. Approval of Regular and Annual Meeting Minutes on July 11, 2022 and Special Meeting Minutes on July 25, 2022.
  - B. Approve Personnel Action
  - C. Approve Financial Reports
  - D. Approve the Purchases and Issuing of Accounts Payable and Payroll
  - E. Approve Conflict Disclosures and Waiver Authorizations Pursuant to SDCL 3-23-3
7. Items Removed From Consent Agenda
8. Elementary and Secondary Curriculum and Instruction Items:

9. Superintendent Items:

- A. Approve Student Assignment Requests SA-23-01 through SA-23-02 as recommended for the 2022-23 school year.
- B. Approve Open Enrollment applications as recommended to attend Douglas School District effective for the 2022-23 school year.
- C. Approve the New Elementary School Design Development phase and authorize the Construction Document phase as presented by DLR Group and COOP Architects.
- D. Douglas School District Strategic Direction Update & Draft Timeline.

10. Fiscal Resources Items:

11. Operational Support Services Items:

- A. Approve Deletion of Job Titles/Descriptions, no longer offered at Douglas School District.
- B. Approve CMAR (Construction Manager at Risk) Contract Between Douglas School District and Gustafson Builders -Heavy Constructors Inc. for New High School.
- C. Hear and Approve SECOND Reading of REVISED Board Policy AA - School District Legal Status.
- D. Hear and Approve Second Reading REVIEW of Board Policy ABA - Parental / Community Involvement in Decision Making.
- E. Hear and Approve Second Reading REVIEW of Board Policy ABAB- Parent Involvement.
- F. Hear and Approve Second Reading of REVISED policy ABAC - Relations With Parents.
- G. Hear and Approve Second Reading of REVISED Board Policy AC- Non Discrimination in Federal Programs.
- H. Hear and Approve Second Reading REVIEW of Board Policy AC-R- NONDISCRIMINATION IN FEDERAL PROGRAMS Complaint Procedure
- I. Hear and Approve Second Reading REVIEW of Board Exhibits AC-E1, AC-E2, AC-E3- Non Discrimination in Federal Programs Complaint Forms.
- J. Hear and Approve Second Reading REVIEW of Board Policy ACAB- Prohibition Against Aiding and Abetting Sexual Abuse.
- K. Hear and Approve Second Reading REVIEW of policy ACB - Nondiscrimination on the Basis of Handicap/Disability.

- L. Hear and Approve Second Reading REVIEW of Board Policy ADA- Mission Statement.
- M. Hear and Approve Second Reading of REVISED Board Policy AEA- Tobacco-Free Schools.
- N. Hear and Approve Second Reading REVIEW of Board Policy AGA- Contested Hearings.
- O. Hear and Approve Second Reading of REVISED Board Policy AH - Conflict of Interest Disclosure and Authorization.
- P. Hear and Approve Second Reading REVIEW of Board Policy Exhibits AH-E(1)- Conflict of Interest Disclosure, and AH-E(2)- School Board Action on Conflict of Interest Disclosure.
- Q. Hear Second Reading of REVISED Board Policy GCBDC - Jury Duty Leave.
- R. Hear and Approve First Reading of REVISED and REVIEWED Board Policies, SECTION B.

12. Reports:

- A. Superintendent:
- B. Committee Reports From Board Members and Comments from Associate Board Members

13. Upcoming Calendar Events:

- August 15 - Special BOE Meeting/Values & Beliefs
- August 22 - First Day of School for Students
- August 22 - BOE Meeting

14. Executive Session per SDCL 1-25-2.

15. Action As A Result of Executive Session

16. Adjournment

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BDDH</b>
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### Public Participation at Board Meetings

The School Board recognizes and respects the input which may be provided by the public on school district matters. The Board also recognizes and respects the distinction between a school board meeting that is open to the public and a public hearing held by the school board.

- At a school board meeting which is open to the public, members of the public may be present, observe and listen to the school board conduct its business and may speak during the school board meeting consistent with this policy.
- At a public hearing held by the school board, there is usually one topic to be presented by the District and discussed. The public is given the opportunity to speak and be heard on the topic which is the reason for the public hearing. This type of meeting allows for public participation under the rules designed specifically for that meeting and is not subject to this policy.

This Policy applies only to regularly scheduled school board meetings held in open session. Matters addressed in executive session pursuant to SDCL 1-25-2 are not open to the public.

Personnel matters or complaints that directly or indirectly identify an employee shall not be discussed. Complaints against school employees or students, and complaints related to sexual harassment or bullying, must be addressed according to specific school district policies before being addressed by the School Board.

When a complaint against a school employee or a student is brought to the Board during the public forum, the Board President will direct the person bringing the complaint to the applicable complaint procedure. The complaint procedures are designed to ensure the proper balance in protecting the rights of the person(s) bringing the complaint and the rights of the person against whom the complaint is made. The Board will address the complaint only if the matter has been appealed to the Board pursuant to the applicable complaint policy

Persons making references about a specific school employee or employees, or a specific student or students during the public forum should be mindful that based upon what the person says during the public forum the employee(s) or student(s) about whom the comments are made may have legal recourse against the person voicing the complaint.

Persons speaking during the Public Forum at a school board meeting shall not cause public inconvenience, annoyance, or alarm to the school board or any person, and shall not engage in threatening behavior, make unreasonable noise, be disruptive, boisterous, argumentative, or threatening, shall not make comments which

are disrespectful to one or more persons, and shall not use profanity.

The time designated for Public Forum on the agenda shall be immediately before the adoption of the meeting agenda by the school board.

In order to assure that the Board may conduct its meetings in a respectful and efficient manner, the procedure for public participation at regularly scheduled monthly school board meetings is as follows:

1. Agenda and Non Agenda Items:

- a. Before the meeting is called to order, an individual who desires to speak at a school board meeting must in writing inform the Superintendent, the Business Manager or the Board President of the person's desire to speak and the topic upon which the person intends to speak. The requesting party must sign a form (prepared by the school district) with their name, address, email and topic to be addressed. Individuals attending virtually and desiring to speak during public forum, should email their request to the superintendent's office, including all identifying information, by noon the day of the meeting.
- b. During the time designated for Public Forum, the Board President will recognize the person who signed up to speak and the person may speak on the topic according to the rules set forth in this policy
- c. A speaker shall be granted 5 minutes to present comments to the school board. Upon receiving a request for an extension of time from the speaker, the school board, upon a motion being made and passed by a majority of school board members present and voting, may grant an additional amount of time not to exceed 5 minutes. Additional extensions may be granted only upon a two-thirds vote of school board members present and voting.
- d. Should a number of persons wish to address the school board on the same agenda item, or should the comments become repetitious, the School Board President, in the President's sole discretion, may shorten the time for comments to two minutes per person in order that persons wishing to address the school board may be heard and still allow the school board sufficient time to conduct its agenda business.

2. Adding an Item to the School Board Meeting Agenda in Order to Request Specific School Board Action:

- a. Any person or delegation (with one person being the spokesperson for the delegation) making a specific request to the school board which would require formal action by the school board must present a written request to the Superintendent for the item to be placed on the school board meeting proposed agenda. The written request must be submitted to the Superintendent at least five calendar days before the school board meeting.
- b. The specific request to add an item to the agenda shall clearly identify what is being requested and why, signed by the person making the request, and include the person's name, address, email and telephone number.
- c. The Superintendent will forward the request to the School Board President and the Board President will decide whether the item will be placed on the proposed agenda. Whether any item is to be addressed at the school board meeting is determined by a majority of school

board members at the beginning of the school board meeting when the school board adopts the proposed agenda as printed or adopted after being modified.

- d. If the item on the meeting agenda is adopted by the school board, the person or spokesperson for the delegation who has submitted the request for specific school board action will be granted 10 minutes to explain the request to the school board. Upon receiving a request for an extension of time from the speaker, the school board, upon a motion being made and passed by the majority of school board members present, may grant an additional amount of time not to exceed 5 minutes. Additional extensions may be granted only upon a two-thirds vote of school board members present and voting.
- e. In the sole discretion of the school board, requests to the school board for specific action submitted after the proposed agenda has been posted may be:
  - deferred until the next regular meeting or a special school board meeting, or
  - added to the meeting agenda for discussion purposes only, or
  - added to the agenda for discussion and possible action.

### 3. Authority of Presiding Officer:

The Board vests in its presiding officer the authority to terminate the right of any person to speak at the end of the time granted pursuant to provision 1.d, provision 1.e, or provision 2.d. as set forth in this policy. The presiding officer may also terminate the right of a person to speak at a school board meeting should the person cause public inconvenience, annoyance, or alarm to the school board or any person, engage in threatening behavior, make unreasonable noise, disturb or be disruptive of an official school board meeting, or when comments are disrespectful to one or more persons, boisterous, argumentative, threatening, or contain profanity.

If deemed necessary by the presiding officer, the presiding officer may contact local law enforcement to have a person removed from the school board meeting as it is a violation of law for a person to intentionally cause or create a risk of serious public inconvenience, annoyance, alarm or disturbance at a school board meeting.

## REFERENCES

### State Reference:

SDCL 1-25-1	Official meetings open to the public
SDCL 1-25-2	Executive or closed meetings
SDCL 13-32-6	Disturbance of school as a misdemeanor
SDCL 13-8-39	Management of schools by board
SDCL 22-18-35(3)	Disturbing any lawful assembly or meeting

### Policy Cross Reference:

BD	School Board Meetings
Bddb	Board Meeting Agendas and Format
BDDC	Agenda Preparation and Dissemination

**Adoption History**

Approved	9/8/1977		
First Reading of Revision	10/10/1985		
Approved - Revision	11/14/1985		
First Reading	11/17/2014		
Approved	12/8/2014		
First Reading-Rewrite	2/13/2017		
Approved	2/27/2017		
First Reading-Revision	2/28/2022		
Approved	3/14/2022		

**DOUGLAS SCHOOL BOARD  
REQUEST TO COMMENT  
SPEAKER SIGN IN**

DATE \_\_\_\_\_

Persons speaking during the Public Forum at a school board meeting shall not cause public inconvenience, annoyance, or alarm to the school board or any person, and shall not engage in threatening behavior, make unreasonable noise, be disruptive, boisterous, argumentative or threatening, shall not make comments which are disrespectful to one or more persons, and shall not use profanity.

Please print legibly.

	<b>Name &amp; Address</b>	<b>Email &amp; Phone #</b>	<b>Topic / Item #</b>
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SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BDDH-E(2)</b>
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**Introduction to Public Forum**

*If the Board/Board President wishes to have the Board President make an introductory statement at the beginning of the Public Forum, the following may serve as a starting point which could be modified at the discretion of the Board/Board President and which is consistent with local Board policy.*

This is the time for the Public Forum.

Each individual wishing to address the Board is asked to sign the form on the table in the back of the room with their name, address, email and topic to be addressed being legible. Persons having signed in will be recognized and have an opportunity to speak.

Speakers will have five (5) minutes to present comments to the school board. An extension of time may be granted pursuant to Board policy. Should more than one person wish to address the school board on the same agenda item, or should the comments become repetitious, speaker time may be shortened.

The District has policies related to complaints involving bullying, sexual harassment, school employees or students. Those policies include procedures designed to balance the rights of the person(s) bringing the complaint and the rights of the person against whom the complaint is made. If a complaint about bullying, sexual harassment, school employees or students is brought to the Board during the public forum, the person will be informed as to the applicable complaint procedure.

\* Individuals attending virtually and desiring to speak during public forum, instructions are given on the meeting agenda when it is posted to email their request to the superintendent’s office, including all identifying information, by noon the day of the board meeting.

*Notes: All Board members should be aware that SDCL 22-18-35(3) says any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by disturbing any lawful assembly or meeting of persons without lawful authority is a criminal offense (Class 2 Misdemeanor). This statute could be referenced in extreme situations if a speaker/group fails to respect the decorum expected during a formal governmental meeting*

Adopted: 3/14/2022

MINUTES  
DOUGLAS SCHOOL DISTRICT  
BOARD OF EDUCATION MEETING

Monday, July 11, 2022

The Douglas School District No. 51-1 Board of Education held a regular meeting on Monday, July 11, 2022 at 5:00 PM in the library conference room at Vandenberg Elementary School, Box Elder, South Dakota. President Cathleen Melendez presided. Those present were:

Ben Frerichs: Present, Tanya Gray: Present, Amy McGovern: Present, Cathy Melendez: Present, Chris Misselt: Present.

All actions in these Minutes were by unanimous vote unless otherwise stated.

President Melendez called the meeting to order at 5:01 p.m.

President Melendez read a resolution honoring outgoing Board Member Ben Frerichs for his five years of service to the students, staff and community of Douglas School District.

There was nothing for public forum.

Motion to approve the agenda. This motion, made by Ben Frerichs and seconded by Tanya Gray, Carried.

Held Public Hearing on the proposed 2022-23 School District Budget. There were no public comments.

Motion to approve the consent agenda. This motion, made by Amy McGovern and seconded by Ben Frerichs, Carried.

Approved Special Meeting Minutes for June 20, 2022 and Regular Meeting Minutes for June 27, 2022.

Approved Personnel Action for July 11, 2022. (Attachment)

Approved Accounts Payable Report for July 15, 2022 and Payroll Report for June 2022. (Attachments)

There were no conflicts disclosed as defined in SDCL 3-23.

Approved ThoughtExchange License Renewal for the 2022-23 school year.

Approved Overnight/Out-of-State High School Trip Requests for the 2022-23 school year.

**Superintendent Items:**

The DLR Group presented an overview of the development of the new elementary design. It reviewed the step-by-step process to reach this point. The presentation covered the site (drop off/pickup areas, parking and playgrounds), as well as, the interior and exterior design based on

the colors & hues, textures, and materials used in different areas throughout the building to represent the concept of being guided by light in exploring caves. The new PK-5 elementary building will be located between Creekside Estates and Prairie View Estates subdivisions, south of 14/16. The Design Development will be recommended for approval at the next board meeting.

Motion to approve resolution commending Ben Frerichs for his five years of service to the Douglas School Board of Education. This motion, made by Chris Misselt and seconded by Amy McGovern, Carried.

**WHEREAS**, Ben Frerichs has faithfully served the children and patrons of the Douglas School District for five (5) years as a school board member; and

**WHEREAS**, Ben Frerichs has been involved in and contributed to the activities and functions of the schools and has given freely of his time and energies to resolve the issues, both educational and financial, which have come before the Board; and

**WHEREAS**, Ben Frerichs has maintained high standards and earned the respect of educators and fellow board members;

**NOW THEREFORE BE IT RESOLVED** that the School Board of Douglas School District 51-1 hereby commends Ben Frerichs for his valuable contributions to the students and staff of the Douglas School District.

Motion to approve confirmation of Col. Patrice Holmes and CMSgt. Keelan Rasmusson as associate board members with Fran Apland confirmed as alternate per Board Policy BL. This motion, made by Chris Misselt and seconded by Tanya Gray, Carried.

Motion to approve Negotiated Agreement for the 2022-23 school year. This motion, made by Tanya Gray and seconded by Amy McGovern, Carried.

Motion to approve contract with Riggs Enterprises to facilitate the Strategic Direction process for the district. This motion, made by Amy McGovern and seconded by Tanya Gray, Carried.

#### **Fiscal Resources Items:**

Motion to approve Resolution for contingency transfers as presented. This motion, made by Ben Frerichs and seconded by Amy McGovern, Carried.

**LET IT BE RESOLVED** that the Douglas School District #51-1 Board of Education, after duly considering the FY22 Expenditure needs, hereby approves and authorizes the transfer of FY22 contingency funds to the appropriate expenditure accounts within and between the General and Special Education Funds for payment of instructional materials, equipment and costs not to exceed \$301,422.

Motion to Approve Supplemental Budget in the amount of \$1,504,079.32 as presented. This motion, made by Amy McGovern and seconded by Ben Frerichs, Carried.

## **Operational Support Services Items:**

Motion to Approve Declaring Technology Items as Surplus (Sale or Disposal). This motion, made by Amy McGovern and seconded by Chris Misselt, Carried.

Motion to approve first readings of Board Policies in Items #12B-P as one motion. This motion, made by Chris Misselt and seconded by Tanya Gray, Carried.

### Approved First Readings:

Revised Board Policy AA - School District Legal Status

Revised Board Policy ABAC - Parent Involvement

Revised Board Policy AC - Nondiscrimination in Federal Programs

Revised Board Policy AEA - Tobacco Free Schools

Revised Board Policy AH - Conflict of Interest Disclosure and Authorization

Revised Board Policy GCBDC - Jury Duty Leave

### Approved Review:

Board Policy ABA - Parental / Community Involvement in Decision Making

Board Policy ABAB - Parent Involvement

Board Policy Regulation AC-R - Nondiscrimination in Federal Program Complaint Procedure

Board Policy Exhibits AC-E(1), AC-E(2), and AC-E(3) - Nondiscrimination in Federal Programs Complaint Forms

Board Policy ACAB - Prohibition Against Aiding and Abetting Sexual Abuse

Board Policy ACB - Nondiscrimination on the Basis of Handicap/Disability

Board Policy ADA - Mission Statement

Board Policy AGA - Contested Hearings

Board Policy Exhibit AH-E(1) Conflict of Interest Disclosure

Board Policy Exhibit AH-E(2) School Board Action on Conflict of Interest Disclosure

Motion to approve contract with Tyler Technologies for Transportation Management System. This contract is for three years at the total cost of \$113,502.50. This motion, made by Chris Misselt and seconded by Ben Frerichs, Carried.

Committee Reports from Board Members and Comments from Associate Board Members.

Board members individually thanked Ben Frerichs for his service on the school board. He replied that as an alumni, it has been an honor to serve, and he feels the Board is in a good place. Members don't always agree, but there is candid discussion and resolution.

Tanya Gray reminded board members that early registration for the ASBSD Joint Convention ends Friday. In addition, there is a New Board Member Workshop and the President's Workshop on Wednesday which require additional registration.

Cathy Melendez stated the Box Elder Chamber of Commerce meets next week.

Upcoming Calendar Events:

July 25-28 - Session 2 Adaptive Schools Staff Training

July 25 - Special BOE Meeting - Work Session with Toni Prickett 5:00 pm

August 15 - Special BOE Meeting - Ellie Martinez - District Values & Beliefs

Motion to move into executive session at 6:03 p.m. for personnel according to SDCL 1-25-2.1.

This motion, made by Ben Frerichs and seconded by Tanya Gray, Carried.

President Melendez called the Board out of executive session at 6:15 p.m.

No action taken.

Motion to adjourn the meeting at 6:16 p.m. This motion, made by Ben Frerichs and seconded by Chris Misselt, Carried.

\_\_\_\_\_  
Cathleen Melendez, President

\_\_\_\_\_  
Trista Olney, Business Manager

\_\_\_\_\_ Initials

\_\_\_\_\_ Date

Published once at the total approximate cost of \_\_\_\_\_.

**DOUGLAS SCHOOL DISTRICT  
PERSONNEL ACTION 7/11/2022**

**Certified Resignations/Retirements/Terminations**

	Name	Position	Location	Effective Date
**	Kendra Barrett	Choir/Music Teacher	Middle School	2022-2023 School Year " Assessed \$2,000 penalty as per terms of her contract"

**Certified Teaching Contract Amendments**

	Name	Bldg/Position	Lane Change	Effective Date
	Lisa Bauer	PAT ELEM (FC)/SLP	M to M+45	2022/2023 School Year
	Eric Elder	MS/Social Studies Teacher	M+30 to M+45	2022/2023 School Year
	Jesse Hamer	HS/English Teacher	M to M+30	2022/2023 School Year
	Richard Hamil	VES/MS/Band Teacher	M+30 to M+45	2022/2023 School Year
	Melissa Hubbell	MS/Librarian	M to M+30	2022/2023 School Year
	Rebecca Nelson	VES/Computer Teacher	B to M	2022/2023 School Year
	Megan O'Daniel	PAT ELEM (BC) /Instructional Leader	M+30 to M+45	2022/2023 School Year
	Brittany Pearson	MS/Math Teacher	B to M	2022/2023 School Year
	Monica Waltman	CARR/Special Services Director	M+45 to M+60/Specialist	2022/2023 School Year
	Tonia Vahlberg	HS/Special Education Teacher	M to M+30	2022/2023 School Year
	Shae Weber	MS/Social Studies Teacher	M to M+45	2022/2023 School Year

**Temporary Hires**

	Name	Bldg/Position	Salary	Effective Date
	Tara Albers	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022
	Laura Armstrong	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022
	Judith Badura	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022
	Nathan Batten	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022
	Bridget Bolinger	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022

Jenna Burach	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Tony Burns	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Andrea Byrd	CARR/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
David Carrol	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Kevin Case	CO/June Adaptive Schools Training	\$100 Completion Bonus	06/20/2022-06/24/2022	
Jeannie Clark	PAT ELEM(FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Courtney Crosswait	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Kim Darata	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Lyndsay Deyo	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Kathleen Doerr	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Kelsey Duncan	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Sydney Frank	CARR/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00"	06/20/2022-06/24/2022	

Rosevel Geopano	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Holly Good	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Richard Hamil	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/22-06/24/2022	
Tammy Hencke	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Casey Hoover	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Hillary Jastorff	CARR/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Lucas Jastorff	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Lori Kindle	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Janifer Kirk	Summer Secreterial	\$15.05 per hour up to 2 hours per week	06/13/2022-06/30/2022	
Janifer Kirk	Summer Secreterial	\$16.50 per hour up to 2 hours per week	07/01/2022-07/29/2022	
Janifer Kirk	Summer Custodian	\$13.00 per hour	7/7/2022	
Traci Knight	Summer Feeding Program	Wage Change to \$15.75 per hour	06/03/2022	
Megan Knutson	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/22-06/24/2022	
Aaron Kowalski	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	

Jaelyn Lardy	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Brandi Marler	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Briana Marty	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/22-06/24/2022	
Kevin Militelo	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Connie Mogensen	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Rosalie Moore	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Michelle Moser	PAT ELEM(FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Sandra Nelson	PAT ELEM(FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Andrew Napier	HS/Boys Head Soccer Coach	\$5,589.00 per year	07/01/2022	
Sherry Nelson	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Trista Olney	CO/June Adaptive Schools Training	\$100.00 Completion Bonu	06/20/2022-06/24/2022	
Melissa Owen	CARR/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Juliana Parker	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/22-06/24/2022	
Ann Pettit	CO/June Adaptive Schools Training	\$100.00 Completion Bonu	06/20/2022-06/24/2022	

Shelby Reamer	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Shanna Sandal	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00"	06/20/2022-06/24/2022	
Loretta Schmidt	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Lindsey Scott	VES/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Tasa Sotelo	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Angela Stanford	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Theresa Steffy	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Kaitlin Summers	PAT ELEM (bC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Tiffany Thomas	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Shannon Utter	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Tonia Vahlberg	HS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
Kit Veit	CO/June Adaptive Schools Training	\$100.00 Completion Bonus	06/20/2022-06/24/2022	

	William Velez	MS/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
	Troy Volesky	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
	Jessie Walton	PAT ELEM (BC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
	Kerry Waterson	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
	Marlee Wieman	PAT ELEM (FC)/June Adaptive Schools Training	\$100.00 per day for 4 Days \$100.00 Completion Bonus Total \$500.00	06/20/2022-06/24/2022	
**	Personnel Action additions and updates made after intial publication and before scheduled school board meeting.				

## Board Report - For School Board 07/15/2022

<u>Vendor Name</u>	<u>Check #</u>	<u>Expensed</u>	<u>Amount</u>
A TO Z SHREDDING	180937	X	294.15
AMAZON.COM	180938	X	78.00
ASBSD	180951		4,177.59
CARQUEST AUTO PARTS	180940	X	294.44
DOUGLAS PETTY CASH	180953		3,610.00
FIDUCIARY ACCOUNT	180955		910.00
FLOYD'S TRUCK CENTER	180941	X	6,928.65
HARVEYS LOCK SHOP. INC.	180942	X	22.90
KIEFFER SANITATION. INC.-AUTO PAY	62022		1,912.84
KILOWATT ELECTRIC INC.	180943	X	2,127.33
MENARDS	180944	X	104.97
NAVIGATE 360. LLC	180956		250.00
NORTH CENTRAL BUS & EQUIPMENT CO. INC	180945	X	984.59
OLSON TOWING	180946	X	329.25
PRAIRIE AUTO PARTS INC	180947	X	434.71
SASD	180959		2,558.00
SDSNA	180960		140.00
SHERWIN WILLIAMS	180948	X	42.43
SOFTWARE UNLIMITED INC	180961		8,100.00
TIE	180962		2,650.00
TRAVEL LODGE BY WYNDHAM	180949	X	358.00
VOYAGER FLEET SYSTEMS. INC.	180950	X	1,622.22
WEST RIVER ELECTRIC-AUTOPAY	71322		1,266.37
GENERAL FUND			<hr/> 39,196.44
BOX ELDER HARDWARE	180939	X	74.89
NORTH CENTRAL BUS & EQUIPMENT CO. INC	180957		205,870.00
RIVERSIDE TECHNOLOGIES INC	180958		232,010.00
CAPITAL OUTLAY			<hr/> 437,954.89
COUNCIL FOR EXCEPTIONAL CHILDREN	180952		305.00
EDUCATIONAL ADVANTAGES. INC.	180954		5,100.00
FIDUCIARY ACCOUNT	180955		272.00
SASD	180959		777.50
TRAVEL LODGE BY WYNDHAM	180949	X	179.00
SPECIAL ED			<hr/> 6,633.50
AMAZON.COM	180938	X	79.98
FIDUCIARY ACCOUNT	180955		178.00

Board Report - For School Board 07/15/2022

<u>Vendor Name</u>	<u>Check #</u>	<u>Expensed</u>	<u>Amount</u>
NAVIGATE 360. LLC	180956		2,317.50
GRANTS			<u>2,575.48</u>
			486,360.31
DOUGLAS PETTY CASH	11818		495.00
GENERAL FUND	11817	X	173.50
FOOD SERVICE			<u>668.50</u>
			<u>668.50</u>
Grand Total:			<u>487,028.81</u>

**PAYROLL EXPENDITURES**

**JUNE 7 2022**

**JUNE 21 2022**

**TOTALS**

**\$1,071,581.33**

**\$1,199,665.01**

MINUTES  
DOUGLAS SCHOOL DISTRICT  
BOARD OF EDUCATION MEETING

**ANNUAL MEETING**  
Monday, July 11, 2022

The Douglas School District No. 51-1 Board of Education held a meeting on Monday, July 11, 2022 ANNUAL MEETING After the Regular Meeting in the library conference room at Vandenberg Elementary School, Box Elder, South Dakota. Those present were:

Tonya Amaral; Tanya Gray; Cathleen Melendez; Amy McGovern; and Chris Misselt.

All actions in these Minutes were by unanimous votes unless otherwise stated.

Business Manager Trista Olney called the meeting to order at 6:19 p.m.

Business Manager Trista Olney administered the Oath of Office to new board member, Tonya Amaral and incumbent board member, Amy McGovern.

Motion to approve the agenda. This motion, made by Cathy Melendez and seconded by Amy McGovern, Carried.

Business Manager Trista Olney conducted the election of officers for Fiscal Year 2022 as follows:

Motion to approve the nomination of Tanya Gray for Board President. This motion, made by Cathy Melendez and seconded by Amy McGovern. Roll Call Vote Taken. Voting Yea: Gray, McGovern, Melendez. Voting Nay: Amaral, Misselt. Carried.

Motion to approve the nomination of Amy McGovern for First Vice-President. This motion, made by Cathy Melendez and seconded by Tanya Gray. Roll Call Vote Taken. Voting Yea: Gray, McGovern, Melendez, Misselt. Voting Nay: Amaral. Carried.

Motion to approve the nomination of Cathy Melendez for Second Vice-President. This motion, made by Amy McGovern and seconded by Tanya Gray. Unanimous vote was cast. Carried.

Motion to approve BOE Regular Meeting Schedule for 2022-23. This motion, made by Chris Misselt and seconded by Amy McGovern, Carried.

The 2022-23 suggested meeting dates for Regular BOE meetings are the 2nd and 4th Monday of each month at 5:00 p.m. at Vandenberg Elementary School Library Conference Room with the following exceptions: In July and December when only the first meeting of the month will be held and should a board meeting fall on a school holiday, the meeting will be held on the following day or as follows: Monday, October 10, 2022 change to

Tuesday, October 11, 2022 (holiday) and Monday, April 10, 2023 change to Thursday, April 6, 2023 (spring break).

Motion to approve the appointment of board member representation on district committees. This motion, made by Cathy Melendez and seconded by Amy McGovern, Carried.

Motion to approve using Parliamentary procedure guidelines for board meetings. This motion, made by Cathy Melendez and seconded by Tonya Amaral, Carried.

Motion to approve setting compensation for board members at \$75.00 per each allowable meeting. (Maximum set by law is \$75.00). This motion, made by Chris Misselt and seconded by Amy McGovern, Carried.

Motion to approve the following resolution. This motion, made by Cathy Melendez and seconded by Amy McGovern, Carried.

**BE IT RESOLVED** that in order to comply with SDCL 1-25-1, as amended by HB 1172 (2018 Legislative Session), which states "The chair of the public body shall reserve at every official meeting by the public body a period for public comment, limited at the chair's discretion, but not so limited as to provide for no public comment," and also provide for a known procedure by which there may be public participation at school board meetings, the President of the Douglas School District Board of Education shall apply and follow School Board Policy BDDH with respect to public participation at all school board meetings.

Motion to approve adoption of all previous board policies in effect as of June 30, 2022. This motion, made by Amy McGovern and seconded by Cathy Melendez, Carried.

Motion to adopt the Code of Conduct for School Board Members per Board Policy BBF - Board Member Code of Ethics. This motion, made by Chris Misselt and seconded by Tonya Amaral, Carried.

Motion approve Items #15A-19H (inclusive) on the consent agenda. Exceptions to the one motion may be necessary if a board member wishes to discuss or review any item in more detail. This motion, made by Cathy Melendez and seconded by Chris Misselt, Carried.

Approved the depositories for funds and investments of the Douglas School District 51-1 for the 2022-23 school year.

Authorized an imprest cash revolving fund in the amount of \$2,000 for the 2022-23 school year; and authorized the Business Manager to make advance payments for meals and miscellaneous expenditures as deemed necessary.

Authorized the Business Manager to establish a petty cash fund in the amount of \$75.00 for various functions of the school district as deemed necessary, and further authorized the Business Manager to establish an imprest fund in the amount of \$420 for the school food services program.

Authorized the Superintendent or Business Manager to sign all State vouchers entering claims on behalf of the school district for the 2022-23 school year.

Approved the submission of the 2022 Annual Report, and authorized the Superintendent and Business Manager to sign on behalf of the District.

Authorized the Business Manager and/or her representative as the school district purchasing agent for the 2022-23 school year.

Authorized the Business Manager to advertise for bids on necessary items during the 2022-23 school year.

Approved use of Black Hills Special Services Cooperative for services under a noncompetitive proposal as it is determined that BHSSC is the only vendor (single source) within the region that can provide all the necessary services needed by the District.

**Annual Appointments:**

Approved naming the Rapid City Journal as the office newspaper for the 2022-23 school year; and, the District Newsletter and District Webpage will also be used for providing district information to the public.

Approved contracting with the firm of Ketel Thorstenson, LLP to conduct the annual audit for the period ending June 30, 2022.

Approved retaining the law firm of Lynn, Jackson, Shultz & LeBrun to represent the district for legal matters during the 2022-23 school term.

Appointed Business Manager Trista Olney as Administrator of Fiduciary Funds.

Authorized the superintendent of schools to close schools because of weather or emergency and, in the event of the superintendent's absence, follow the set chain of command.

Authorized the appointment of the superintendent as the Age Discrimination Act Compliance Officer.

Authorized the appointment of the superintendent as the Asbestos Compliance Officer.

Authorized the superintendent or designee and the network coordinator to maintain access to the district's electronic network.

Authorized the appointment of all building principals as Truancy Officers.

Authorized the appointment of the Executive Director of Operational Support Services as the Title IX Compliance Officer.

Authorized the appointment of the Special Services Director as the Rehabilitation Action Section 504 Compliance Officer.

Authorized the appointment of the Special Services Director as the Americans with Disabilities Act Compliance Officer.

Approved the following Resolutions for the 2022-23 school term:

**BE IT RESOLVED** that the Business Manager be authorized to make application for all local, state, and federal funds for which the school district may qualify during the 2022-23 school year;

**BE IT FURTHER RESOLVED** that the Superintendent or Executive Director of Academics be authorized to sign as the authorized District representative for all categorical or block grant State or Federal program applications;

**BE IT FURTHER RESOLVED** that the Superintendent or Executive Director of Academics be authorized to sign fiscal reports for the Title Programs;

**BE IT FURTHER RESOLVED** that the Superintendent of Schools and the Business Manager are authorized to purchase and/or receive State Surplus Property.

**BE IT RESOLVED** that the Business Manager be fully authorized to make proper application and to sign all papers required for funds available to the District from the Federal Government under Public Law 7003 Impact Aid for the 2022-23 school term.

**BE IT RESOLVED** that the Business Manager be fully authorized to make proper application and to sign all papers required for funds available to the District from the Federal Government under Public Law 7002 Impact Aid for the 2022-23 school year.

**WHEREAS**, the nature of tax collections, federal deposits, and other revenue is such that cash on deposit in the District's Depositories at times exceeds the requirement for current expenditures.

**NOW THEREFORE, BE IT RESOLVED** that the Business Manager is hereby directed to invest such cash balances which may exist in interest-bearing certificates, time deposits and government issues and the investments be determined in accordance with expenditure requirements and that such interest as is earned on said deposits be credited to the General Fund.

Authorized participation in the following associations: Associated School Boards of South Dakota (ASBSD); Impacted Schools of South Dakota (ISSD); Military Impacted School Association (MISA); Military Interstate Children's Compact Commission (MIC3); National Association of Federally Impacted Schools (NAFIS); and Large School Group of South Dakota.

Approved the use of electronic signatures for all accounts payable and payroll checks for the 2022-23 school year.

**Elementary and Secondary Curriculum and Instruction Items:**

Approved certified stipend rate for 2022-23: \$50.00 for half day; and \$100 for full day.

Approved high school department head stipend rate of \$1,500 for the 2022-23 school year.

Approved the 2022-23 Douglas School District Special Education Comprehensive Plan.

**Superintendent Items:**

Authorized the superintendent of schools and/or his designee to travel to locations that are necessary for the operation of the school district.

Approved the following resolutions for the 2022-23 school year:

**WHEREAS**, the Superintendent of Schools is required to attend meetings and events necessary for the operations of the school district, both in-district and in the local area;

**THEREFORE BE IT RESOLVED** that the Douglas Board of Education will provide the Superintendent with a \$100 per month allowance for in-district and local travel, paid quarterly; in addition, travel outside of Rapid City will be reimbursed at the GSA POV mileage rate and processed quarterly.

**Operational Support Services Items:**

Authorized the superintendent of schools or his designee to hire contractual and non-contractual personnel for the school district during the 2022-23 school year subject to the concurrence of the Board of Education at its next regular meeting after the date of hiring; all contracts shall not be effective or binding until approved by the Board of Education; and approved the use of the automatic signature for a professional contract to be issued during the 2022-23 school year.

Approved the publication of employee salary amounts for the 2022-23 school term.  
(Attachment)

Approved the following rates for substitute teachers in the Douglas School District for the 2022-23 school term: Non-Certified - \$120/day; Certified - \$150/day.

Authorized the Executive Direction of Operational Support Services to submit an Intent to Renew Agreement and the 2022-23 Policy for Hot Lunch Program and further to provide a hot lunch program at all levels and a milk program for kindergarten with a schedule of charges as follows:

<u>Lunch</u>		<u>Breakfast</u>	
Elementary K-5	\$2.50	Students	\$2.00
Secondary 6-12	\$2.75	Adults	\$2.60
Adults	\$4.10		
Milk	\$0.35		

Approved participation in Delta Dental for Student Dental Accident Insurance Program and the South Dakota High School Activities Association (SDHSAA) Student Accident Insurance Program for the 2022-23 school term.

Approved the following high school co-curricular admission rates for the 2022-23 school year for out-of-district attendees: Adults - \$5.00; Students (grade 1-12 with ID) \$3.00.

Authorized the issuance of complimentary activity passes to all employees and to all residents/students of the district for the 2022-23 school term; and lifetime complimentary activity passes for all retired employees and senior citizens (age 55 and over).

Approved the district participation in the Emergency School Bus Mutual Assistance Pact for the 2022-23 school term.

Motion to adjourn the meeting at 6:44 p.m. This motion, made by Chris Misselt and seconded by Cathy Melendez, Carried

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Tanya Gray, President

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Trista Olney, Business Manager

\_\_\_\_\_ Initials

\_\_\_\_\_ Date

Published once at the total approximate cost of \_\_\_\_\_.

APPROVE the hiring and publication of salaries for the following Administrators for the 2022/2023 School Year effective 7/1/2022:

<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>BASE PAY</b>	<b>POSITION</b>
CASE	KEVIN	\$159,692.00	SUPERINTENDENT
CLARK	JEANNIE	\$104,265.00	PRINCIPAL
COWEN	STACEY	\$91,881.63	ASST. PRINCIPAL
CROSSWAIT	COURTNEY	\$102,957.47	PRINCIPAL
GHOLSON	SEAN	\$99,855.00	ASST. PRINCIPAL
GUSSO	BUD	\$122,430.00	EXECUTIVE DIRECTOR OPERATIONAL SUPPORT SERVICES
HATFIELD	NAOMI	\$102,585.00	ACTIVITIES DIRECTOR
OLNEY	TRISTA	\$121,982.00	BUSINESS MANAGER
PETTIT	ANN	\$128,289.00	EXECUTIVE DIRECTOR ELEMENTARY ACADEMICS
SANDAL	SHANNA	\$100,800.00	PRINCIPAL
VEIT	KIT	\$113,914.00	EXECUTIVE DIRECTOR SECONDARY ACADEMICS
VOLESKY	TROY	\$109,726.50	PRINCIPAL
WALTMAN	MONICA	\$110,880.00	SPECIAL SERVICES DIRECTOR
WINCE	DUANE	\$109,340.00	PRINCIPAL

APPROVE the hiring and publication of salaries for the following Certified Staff for the 2022/2023 School Year effective 7/1/2022:

LAST NAME	IRST NAM	BASE	BLDG
ALBERS	TARA	\$58,525.00	PAT ELEM (FC)
ANDERSON	TARA	\$48,275.00	PAT ELEM (BC)
ARMSTRONG	LAURA	\$68,525.00	MS
ASHLEY	LORI	\$72,275.00	PAT ELEM (BC)
AWE	AMANDA	\$48,275.00	MS
BADURA	JUDITH	\$72,275.00	PAT ELEM (FC)
BARAGAR	TRICIA	\$55,525.00	VES
BARAGAR	CATHY	\$62,275.00	MS
BARRETT	KENDRA	\$48,275.00	MS
BATTEEN	NATHAN	\$65,525.00	MS
BAUER	LISA	\$79,775.00	PAT ELEM FC (DIST)
BECKER	MYRNA	\$72,275.00	VES
BELL	KATIE	\$62,275.00	PAT ELEM (BC)
BERGEN	CARRIE	\$53,525.00	HS
BLAIR	AARIKA	\$48,275.00	PAT ELEM (FC)
BLANK	HAYLEY	\$48,275.00	PAT ELEM (FC)
BOEDING	JASON	\$64,025.00	HS
BOLINGER	BRIDGET	\$51,275.00	VES
BONNER	SHANNON	\$72,275.00	HS
BURBACH	JENNA	\$66,275.00	VES
BURNS	ANTHONY	\$54,832.05	HS
BYRD	ANDREA	\$71,525.00	PAT ELEM (FC)
CARROLL	DAVID	\$72,275.00	PAT ELEM (BC)
CLARK	TANA	\$60,025.00	PAT ELEM (FC)
CLARK	KARLINE	\$67,775.00	HS
CLAUSON	BRENDA	\$72,275.00	MS
COATES	MARY	\$72,275.00	PAT ELEM (FC)
COATES	KELLY	\$64,025.00	MS
COATES	RUTH	\$64,025.00	HS
COOPER	WOODROW	\$48,275.00	PAT ELEM (BC)
COTE	KYLA	\$56,275.00	PAT ELEM (BC)
COYLE	ALISON	\$48,275.00	MS (DIST)
CRANE	MICHELLE	\$58,525.00	HS
CROOKS	TERESA	\$72,275.00	CARR (DIST)
CROOKS	TERESA	\$72,275.00	CARR (DIST)
CUNDALL	MARCY	\$62,275.00	PAT ELEM (BC)
CURRY	DONNA	\$55,525.00	MS
DARATA	KIMBERLY	\$72,275.00	HS
DAUGHERTY	DALE	\$55,025.00	MS
DAUM	LYNETTE	\$58,525.00	PAT ELEM (BC)
DELANEY	SHAWNA	\$64,025.00	VES
DENEKAMP	CATHLEEN	\$72,275.00	VES

APPROVE the hiring and publication of salaries for the following Certified Staff for the 2022/2023 School Year effective 7/1/2022:

DEWEY	SUSAN	\$72,275.00	MS
DEYO	LYNDSAY	\$64,775.00	PAT ELEM (BC)
DISTEL	BRETT	\$52,775.00	MS
DOERR	KATHLEEN	\$72,275.00	HS
DRURY	SAMANTH	\$76,025.00	PAT ELEM (BC)
DRYSDALE	JOIE	\$29,262.50	MS
DUNCAN	KELSEY	\$48,275.00	PAT ELEM (BC)
ELDER	ERIC	\$67,775.00	MS
ENGEL	KRISTA	\$58,525.00	PAT ELEM (BC)
ERLANDSON	AMY	\$57,275.00	HS
FAUTZ	KIRSTEN	\$49,775.00	PAT ELEM (BC)
FEILER	JENNIFER	\$50,525.00	PAT ELEM (FC)
FERGUSON	NICK	\$49,775.00	MS
FINNEY	LARESSA	\$54,025.00	PAT ELEM (FC)
FLINT	KERI	\$56,275.00	PAT ELEM (FC)
FLOYD	DANE	\$57,775.00	PAT ELEM (BC)
FOX	KRYSTLE	\$48,275.00	PAT ELEM (BC)
GEOPANO	ROSEVEL	\$53,525.00	VES
GLANDT	MARGERY	\$72,275.00	PAT ELEM (BC)
GOMEZ	ASHLEY	\$61,525.00	HS/MS
GOOD	HOLLY	\$72,275.00	VES (DIST)
GOTTA	OLIVIA	\$63,525.00	PAT ELEM (FC)
GRINDLE	ARIANNA	\$48,275.00	HS
HAGER	SUMMER	\$59,275.00	MS
HAIAR	CARA	\$53,525.00	HS
HAMER	JESSE	\$59,025.00	HS
HAMIL	RICHARD	\$68,525.00	VES/MS
HANCOCK	THOMAS	\$72,275.00	MS
HARRIS	DONALD	\$57,275.00	HS
HARTLEY	MELISSA	\$68,525.00	VES
HAZLEDINE	MICHELE	\$49,775.00	PAT ELEM (BC)
HEIER	KAITLIN	\$53,525.00	HS
HEMEN	JANICE	\$68,525.00	PAT ELEM (BC)
HENCKE	TAMMY	\$72,275.00	PAT ELEM (BC)
HERDER	LEON	\$48,275.00	HS
HOOVER	CASEY	\$52,025.00	HS
HORAN	DAVID	\$57,275.00	HS
HORAN	SHERRI	\$68,525.00	MS
HOWARD	MATTHEW	\$58,275.00	MS
HOWIE	HOLLY	\$57,025.00	HS
HUBBELL	MELISSA	\$59,775.00	MS
HUMKE	JOHN	\$72,275.00	HS
HYDE	COREY	\$49,025.00	VES

APPROVE the hiring and publication of salaries for the following Certified Staff for the 2022/2023 School Year effective 7/1/2022:

JASTORFF	LUCAS	\$58,525.00	PAT ELEM (FC)
JASTORFF	HILLARY	\$52,025.00	CARR
JOHNSON	MARANDA	\$58,525.00	VES
JOHNSON	ORANGE	\$72,275.00	HS
JORDAN	JENNIFER	\$70,775.00	HS
KEARNS	KIMBERLY	\$58,525.00	MS
KEEN	JOHN	\$58,525.00	HS
KENEFICK	MARK	\$70,025.00	VES
KINDLE	LORI	\$62,275.00	PAT ELEM (BC)
KNUTSON	MEGAN	\$48,275.00	PAT ELEM (BC)
KNUTSON	NICHOLAS	\$72,275.00	MS
KNUTSON	KRISTIN	\$72,275.00	HS (DIST)
KOWALESKI	AARON	\$54,775.00	MS
KUEGLE	ELKE	\$62,775.00	HS
LARDY	JAELYN	\$48,275.00	HS
LARSON	JENNIFER	\$72,275.00	HS
LEE	TINA	\$57,275.00	MS
LEE	TINA	\$57,275.00	MS
LIPP	TARA	\$68,525.00	CARR
LOLLEY	GRANT	\$53,525.00	
LYONS	AMBER	\$57,775.00	HS
MAMULA	SHALEE	\$48,275.00	PAT ELEM (BC)
MARLER	BRANDI	\$67,775.00	VES
MARSHALL	KRYSTLE	\$51,275.00	VES
MARTENSON	CHERRIE	\$72,275.00	HS
MARTIAN	MICHELLE	\$60,025.00	MS
MARTIN	DOLORES	\$72,275.00	HS
MARTY	BRIANNA	\$49,775.00	PAT ELEM (BC)
MATHEWS	CARL	\$52,775.00	HS
MAXON	SHANNON	\$70,775.00	HS
MAYS	RONALD	\$58,525.00	VES
MCCANN	THERESA	\$53,525.00	PAT ELEM (FC)
MCCARTY	MICHAEL	\$68,525.00	HS
MCCORMICK	DENISE	\$70,775.00	VES
MCFARLAND	KYLE	\$54,275.00	VES
MEADE	LORIE	\$67,275.00	VES
MELCHER	MEGHAN	\$53,525.00	VES
MELTON	JODY	\$66,775.00	PAT ELEM FC (DIST)
MERRILL	TAMARA	\$65,025.00	PAT ELEM BC (DIST)
MILITELLO	KEVIN	\$53,275.00	MS
MILLER	TRAVIS	\$71,525.00	HS
MILLS	JODI	\$58,525.00	PAT ELEM (BC)
MITCHELL	SHELLEY	\$54,025.00	PAT ELEM (FC)
MOBLEY	LAURYN	\$51,275.00	VES

APPROVE the hiring and publication of salaries for the following Certified Staff for the 2022/2023 School Year effective 7/1/2022:

MOGENSEN	CONNIE	\$72,275.00	HS
MONIZE	AINSLEY	\$66,025.00	VES
MOORE	ANGELA	\$68,525.00	MS
MOORE	ROSALIE	\$72,275.00	MS
MORROW	MICHAEL	\$38,421.00	HS
MOSER	MICHELLE	\$70,025.00	PAT ELEM (FC)
MRAZ	TONY	\$59,275.00	HS
MULVEHILL	DEANNE	\$57,275.00	PAT ELEM FC/BC
MULVEHILL	DEANNE	\$57,275.00	PAT ELEM FC/BC
MUNOZ	MICHAEL	\$48,275.00	MS
MURRAY-VERNON	LISA	\$65,775.00	PAT ELEM (BC)
NELSON	SANDRA	\$67,275.00	PAT ELEM (FC)
NELSON	REBECCA	\$53,275.00	VES
NELSON	SHIREEN	\$71,525.00	VES
NIELSEN	TORI	\$48,275.00	MS
O'CONNELL	THERESA	\$72,275.00	PAT ELEM (FC)
O'DANIEL	MEGAN	\$68,525.00	PAT ELEM (BC)
OLESON	ALICE	\$62,275.00	PAT ELEM (FC)
OLSON-CANAAN	CHANDRA	\$72,275.00	PAT ELEM (BC)
OWEN	MELISSA	\$68,525.00	CARR
PACHECO BAHR	TAMMY	\$58,525.00	MS
PALMER	BRIAN	\$53,275.00	MS
PARKER	JULIANA	\$65,525.00	MS
PARKER-GREER	BEVERLY	\$69,275.00	MS
PATAKY	ANTHONY	\$56,275.00	PAT ELEM (BC)
PEARSON	BRITTANY	\$54,025.00	MS
PERKINS	BRANDY	\$58,525.00	PAT ELEM (FC)
PIERSON	JON	\$58,525.00	HS
PLOOSTER	KEVIN	\$72,275.00	HS
POPOWSKI	BART	\$70,025.00	MS
POPPE-BASHAM	PEGGE	\$72,275.00	PAT ELEM (FC)
POWERS	CAITLIN	\$58,525.00	MS
QUIMBY	RACHEL	\$68,525.00	MS
RASMUSSEN	TIMOTHY	\$55,775.00	PAT ELEM (FC)
REAMER	SHELBY	\$49,025.00	VES
REIMER	SARAH	\$65,275.00	CARR (DIST)
RICHTER	SHERRY	\$72,275.00	PAT ELEM (FC)
RIVERA	KAYLA	\$55,525.00	PAT ELEM (FC)
ROSE	JOELLE	\$62,275.00	HS
ROSETTER	LUANN	\$71,525.00	MS
ROSSOW	ANGELA	\$72,275.00	VES (DIST)
ROWE	AMY	\$63,525.00	HS
SCHMIDT	ZION	\$64,025.00	VES
SCHMIDT	LORETTA	\$68,525.00	HS

APPROVE the hiring and publication of salaries for the following Certified Staff for the 2022/2023 School Year effective 7/1/2022:

SCHMIDT	STACEY	\$66,275.00	PAT ELEM (FC)
SCHRAMM	SHELBY	\$50,525.00	PAT ELEM (FC)
SCOTT	LINDSAY	\$68,525.00	VES
SEVER	SARAH	\$65,525.00	PAT ELEM (BC)
SHERWOOD	GAIL	\$72,275.00	MS
SHIELDS	MCKENZIE	\$49,775.00	PAT ELEM (BC)
SIEVEKE	SHELBY	\$51,275.00	PAT ELEM (FC)
SIMON	GEORGIA	\$72,275.00	VES
SIVERTSEN	SHEILA	\$57,775.00	VES
SMITH	DEBORAH	\$72,275.00	HS
SOTELO	TASA	\$48,275.00	PAT ELEM (BC)
STANFORD	ANGELA	\$72,275.00	MS
STEFFY	THERESA	\$62,275.00	PAT ELEM FC/BC
STEFFY	THERESA	\$62,275.00	PAT ELEM FC/BC
STEWART	CHESTER	\$27,456.00	HS
STILES	DENISE	\$68,525.00	HS
STOEBNER	DUNCAN	\$53,275.00	MS
SUMMERS	KAITLIN	\$48,275.00	PAT ELEM (BC)
THOMAS	TIFFANY	\$58,525.00	PAT ELEM (FC)
UTTER	SHANNON	\$72,275.00	PAT ELEM (FC)
VALHBERG	TONIA	\$59,775.00	HS (DIST)
VARILEK	REBEKAH	\$51,275.00	PAT ELEM (BC)
VAUGHN	ANNA	\$49,775.00	HS
VELEZ	WILLIAM	\$63,275.00	MS
WAGNER	JADA	\$48,275.00	PAT ELEM (FC)
WALTON	JESSE	\$53,275.00	HS
WATERSON	KERRY	\$54,775.00	PAT ELEM (FC)
WEBER	SHAE	\$63,275.00	MS
WEIMAN	CHRIS	\$62,275.00	HS
WEINZIRL	COLIN	\$48,275.00	PAT ELEM (FC)
WIEMAN	MARLEE	\$62,275.00	PAT ELEM (FC)
WILLIAMS	SARAH	\$56,275.00	PAT ELEM (BC)
WILLIAMS	MELINDA	\$72,275.00	MS
WILLIAMS	JAMIE	\$68,525.00	VES
WIMP	JEFF	\$53,525.00	VES
WOLDSTAD	CAROL	\$58,525.00	VES
WOODALL	ERIKA	\$56,275.00	PAT ELEM (FC)

APPROVE the hiring and publication of salaries for the following Coordinator for the 2022/2023 School Year effective 7/1/2022:

F	GARNER	JENNIFER	\$64,358.64	FS/MS	\$35.60	FOOD SERVICE COORDINATOR
F	HAUGH	PETER	\$77,837.95	TRANS	\$43.05	TRANSPORTATION COORDINATOR
F	JOHNSON	LANE	\$84,030.91	TECH	\$46.48	TECHNOLOGY COORDINATOR
F	URBAN	KATY	\$74,374.55	CO	\$41.14	COMMUNICATIONS COORDINATOR
F	WALTMAN	JACE	\$77,096.82	B & G	\$42.64	BUILDING AND GROUNDS COORDINATOR

APPROVE the hiring and publication of salaries for the following Classified Staff for the 2022/2023 School Year effective 7/1/2022:

LAST NAME	FIRST NAME	BLDG	POSITION	HOOR RATE
ALLEN	LISA	VES	LRA	\$18.00
ARREDONDO	MONICA	MS	SCTY	\$16.50
AUKERMAN	BRANDY	VES	P SCTY	\$19.50
AURIEMMA	KATHLEEN	HS	L AID	\$19.50
BAUGHMAN	CATHERINE	FS/FC	FSW	\$13.50
BELTRAN	DAWN	HS	AID	\$19.50
BIBERDORF	STACEY	CARR	AID	\$19.50
BLANCHARD	CYNTHIA	TRANS	B AID	\$18.00
BLUMHARDT	MARK	PAT ELEM (BC)	CUS	\$20.25
BOEDING	KRISTINE	TRANS	MTD	\$22.83
BRADSTREAM	GEORGE	TECH	HELP DESK & SERVER SUPPORT	\$24.25
BREDBERG	MICAH	PAT ELEM (FC)	CUS	\$20.25
BROWN	MICHELLE	VES	AID	\$19.50
BROWN (CRAWFORD)	SARA	PAT ELEM (FC)	AID	\$19.50
BUCHHOLZ	SARAH	PAT ELEM (FC)	AID	\$17.25
CAMPBELL	CHRISTINA	TRANS	MTD	\$21.18
CARLSON	CORINNA	TECH	TECH DATABASE	\$26.75
CARTER	LANCE	DIST	SKM	\$25.00
CAUTRELL	ANJA	PAT ELEM (BC)	LRA	\$13.50
CHANCE	RHONDA	VES	AID	\$16.50
CLARK	MICHAEL	HS	SCTY	\$16.50
COBURN	ROBERT	TRANS	B AID	\$17.25
COLLINS	JENNIFER	PAT ELEM (BC)	AID	\$19.50
COMBS	ELIZABETH	PAT ELEM (BC)	TUT	\$15.00
CONNOR	SHAWN	MS	CUS	\$17.25

APPROVE the hiring and publication of salaries for the following Classified Staff for the 2022/2023 School Year effective 7/1/2022:

CORBETT	LARRY	TRANS	MTD	\$22.83
CORBIN	ALLYSON	PAT ELEM (FC)	TUT	\$16.50
CROW	DARLING	VES	RN	\$32.50
DASHNER	CHRISTINA	PAT ELEM (BC)	AID	\$16.50
DERFLINGER	CALIE	VES	AID	\$16.50
DIERKHISING	JILL	PAT ELEM (FC)	LIB AID	\$16.50
DOULDER	TERESA	TRANS	BUS AIDE	\$15.75
DOULDER	TERESA	VES	LRA	\$13.50
ESCODEDO	ERIKA	VES	L AID	\$15.00
FERRIS	EMILY	HS	AID	\$15.00
FRERICHS	BARBARA	TRANS	MTD	\$22.83
FUNK	MARK	PAT ELEM (BC)	LRA	\$15.00
GABRIEL	BEVERLY	TRANS	MTD	\$20.35
GALVAN	ANDREW	MS	CUS	\$16.50
GARCIA	MARIANA	FS/MS	FSW	\$13.50
GAUDINO	JESSICA	PAT ELEM (FC)	RN	\$34.00
GIESEY	KEVIN	HS	CUS	\$17.25
GIESEY	GINA	FS/MS	CBK	\$18.75
GIRTZ	ROBERTA	CARR	SPED AIDE	\$20.00
GOMES	TINA	FS/FC	FSW	\$13.50
GREVOY	ROGER	MS	CUS	\$20.25
GRIJALVA	JOAQUIN	PAT ELEM (FC)	CUS	\$19.50
HALL	HEATHER	VES	AID	\$15.00
HALSTEAD-PEEL	DENISE	CO	P SCTY	\$18.00
HARRE	PETRA	PAT ELEM (BC)	CUS	\$20.25
HARRINGTON	JUANITA	DIST	DELIVERY	\$18.75
HARRIS	SHANNA	PAT ELEM (FC)	LRA	\$15.00
HEISLER	JACQUALINE	VES	TUT	\$15.75

APPROVE the hiring and publication of salaries for the following Classified Staff for the 2022/2023 School Year effective 7/1/2022:

HERNANDEZ	JAZMINE	CARR	AID	\$15.00
HINZMAN	DENEA	FS/BC	FSW	\$15.00
HOLLY	HEATHER	MS	SCTY	\$15.00
HUEBNER	TAMMY	CARR	P SCTY	\$20.25
HUFFMAN	DANA	TRANS	MTD	\$22.83
HUGHES	ROBERT	TRANS	MTD	\$21.18
IVES	BETH	PAT ELEM (FC)	L AID	\$19.50
JACKSON	TULLY	DIST	SSK	\$22.00
JOHNSON	JAMES	HS	CUS	\$17.25
JOHNSON	BRENDA	TRANS	MTD	\$23.33
JOHNSON	JENNIFER	FS/VES	FSW	\$15.00
JORGENSEN	REBECCA	CARR	AID	\$15.75
KEESTER	AMY	PAT ELEM (BC)	P SCTY	\$20.25
KENOYER	REBECCA	PAT ELEM (FC)	SCTY	\$19.50
KEYSER	TERESA	VES	AID	\$19.50
KIRK	JANIFER	HS	SCTY	\$16.50
KNAPP	MONICA	MS	AID	\$18.00
KNIGHT	TRACI	FS/MS	FS SEC	\$16.50
KNODEL	MARILYN	CO	BLDG & GRNDS SEC/RECPT	\$19.50
KNUDSON	KAYLEE	HS	AID	\$15.00
KOCH	JERROLD	HS	CUS	\$20.25
KOCH	TAMMI	TRANS	MTD	\$22.83
KOCH	TAMMI	TRANS	B AIDE	\$18.00
KOCH	TAMMI	TRANS	MTD	\$22.83
KOCHUTIN	ANITA	PAT ELEM (FC)	L AID	\$19.50
KOEHLER	BRIDGET	HS	P SCTY	\$20.25
KOFTINOW	SHANNON	PAT ELEM (BC)	AID	\$16.50
KUENKEL	TARA	VES	AID	\$19.50
KVEENE	KARA	MS	RN	\$32.50
LABINE	KRISTYN	PAT ELEM (BC)	L AID	\$16.50

APPROVE the hiring and publication of salaries for the following Classified Staff for the 2022/2023 School Year effective 7/1/2022:

LANPHEAR	CHRISTY	TRANS	MTD	\$22.83
LAPPE	BROOKE	HS	RN	\$33.25
LAWLER	CAYDEAN	CO	CUS	\$18.75
LAWLER	PETER	VES	CUS	\$20.25
LEBLANC	AMANDA	PAT ELEM (FC)	SCTY	\$19.50
LEFT HAND BULL	LAVERN	PAT ELEM (BC)	CUS	\$15.75
LONG	FLOYD	HS	CUS	\$20.25
LONG	THERESA	FS/HS	FSW	\$18.00
LOWERY	LINDSAY	CARR	AID	\$15.00
LURZ	SHERRY	CO	EX BK KPR 1	\$28.00
MACIEJCZAK	DAN	HS	AID	\$19.50
MACKIE	BRENDA	MS	AID	\$15.00
MAINE	JANE	PAT ELEM (FC)	LRA	\$18.00
MALONE	EDWARD	MS	AID	\$18.00
MANNING	SUSAN	VES	CUS	\$18.75
MANNING	SUSAN	WH	WH ASST	\$18.75
MAYNARD	NANCEE	FC	LRS	\$18.00
MCGUIRE	KACIE	PAT ELEM (BC)	AID	\$15.00
MCPHERSON	JACKIE	CO	ADMIN ASST	\$27.25
MEDINA	CHRISTIE	FS/BC	FSW	\$17.25
MEIER	SANDRA	PAT ELEM (FC)	LRA	\$15.75
MEIER	UGENE	TRANS	MTD	\$20.35
MELLEN	THERESA	TRANS	MTD	\$20.85
MESSMER	ANGELA	FS/FC	FSW	\$14.25
MEVERDEN	KAYLA	TECH	HELP DESK & SERVER SUPPORT	\$24.25
MILLER	HARVEY	PAT ELEM (FC)	CUS	\$20.30
MILLS	THOMAS	FS/VES	FSW	\$13.50
MURPHY	ANDREA	PAT ELEM (BC)	TUT	\$19.50

APPROVE the hiring and publication of salaries for the following Classified Staff for the 2022/2023 School Year effective 7/1/2022:

NELSON	TAMMY	TRANS	MTD	\$22.00
OBERLANDER	SHERYLL	FS/HS	FSW	\$18.00
OBERLANDER	LEONA	HS	SCTY	\$19.50
OSTEN	CAROL	TECH	HELP DESK & SERVER SUPPORT	\$23.50
PAINTER	CAROL	TRANS	MTD	\$22.83
PAINTER	CAROL	TRANS	B. AIDE	\$18.00
PAINTER	CAROL	TRANS	MTD	\$22.83
PATTERSON	JORDAN	FS/HS	FSW	\$18.00
PEARCE	LESLIE	PAT ELEM (FC)	LRS	\$15.00
PETTIGREW	LARRY	MS	CUS	\$20.25
PORUBENSKY	BRANDON	DIST	CUS	\$17.25
PRANGE	LEXI	CARR	SLP AIDE	\$23.50
PRENTICE	CHONDA	FS/MS	FSW	\$15.00
PRIEST	THOMAS	DIST	SSK	\$23.50
PRPICH	LAURIE	VES	SCTY	\$19.50
PULVER	MISCHELLE	HS	AID	\$16.50
QUIGLEY	COLLEEN	PAT ELEM (BC)	LRA/B AID	\$18.00
RATH	ROBERT	MS	AID	\$15.00
READY	BRANDON	TRANS	SK HMD	\$30.80
RICK	HOLLY	PAT ELEM (BC)	LRA	\$13.50
ROSS	WENDY	CO	BK KPR 1	\$22.25
SAVAGE	GRANT	TRANS	MTD	\$22.83
SAVAGE	LAURA	TRANS	MTD	\$19.53
SCHLEUSNER	DENISE	PAT ELEM (BC)	SCTY	\$19.50
SCHMIDT	ANNDEE	MS	P SCTY	\$20.25
SCHOCK	LUANN	PAT ELEM (FC)	AID	\$19.50
SCHWARTZ	JACKIE	HS	SCTY	\$16.50
SCOFIELD	LISA	TRANS	MTD	\$22.83
SHARP	RICHARD	TRANS	MTD	\$22.83
SMALL	RENA	VES	SCTY	\$15.75
SMITH	TIMOTHY	HS	CUS	\$18.75
SMITH	TERRI	TRANS	MTD	\$22.83

APPROVE the hiring and publication of salaries for the following Classified Staff for the 2022/2023 School Year effective 7/1/2022:

SNARSKI	EDWIN	TRANS	MTD	\$21.18
STENKAMP	AMANDA	MS	SCTY	\$19.50
STEWART	KRISTAN	PAT ELEM (BC)	AID	\$19.50
STOLICKER	GINA	HS	AID	\$16.50
STUKERJURGEN	EMILEE	VES	TUT	\$15.00
STUKERJURGEN	LUANN	CO	P SCTY	\$17.25
SUKUT	GRETA	MS	AID	\$15.00
TATE	TONIA	PAT ELEM (BC)	LRA	\$13.50
TAYLOR	CASSIE	HS	AID	\$15.00
THOMPSON	LISA	PAT ELEM (BC)	SCTY	\$19.50
TRACEY	PATTY	TRANS	MTD	\$22.83
ULRICH	TIMOTHY	VES	CUS	\$19.50
USERA	NICHOLE	FS/BC	FSW	\$16.50
VAUGHN	PAMELA	PAT ELEM (FC)	P SCTY	\$20.25
VILLA	CARMEN	PAT ELEM (FC)	AID	\$15.00
VIOLET	LESLIE	PAT ELEM (BC)	AID	\$19.50
WALKER	SHELLI	TRANS	MTD	\$21.18
WALTERS	MARY	MS	AID	\$15.75
WARREN	BARBARA	VES	LRA	\$18.00
WENDT	KARRIE	PAT ELEM (BC)	RN	\$32.50
WILSON	JEFF	PAT ELEM (FC)	AID	\$19.50
WORONIECKI	MEGUMI	FS/MS	FSW	\$14.25

MINUTES  
DOUGLAS SCHOOL DISTRICT  
BOARD OF EDUCATION MEETING

Monday, July 25, 2022

The Douglas School District No. 51-1 Board of Education held a special meeting on Monday, July 25, 2022 at 5:00 PM in the conference room at Douglas Central Office, Box Elder, South Dakota. President Tanya Gray presided. Those present were:

Tonya Amaral: Present, Tanya Gray: Present, Amy McGovern: Present, Cathy Melendez: Present, Chris Misselt: Present.

All actions in these Minutes were by unanimous vote unless otherwise stated.

President Tanya Gray called the meeting to order at 5:00 p.m.

There was nothing for public forum.

Motion to approve the agenda. This motion, made by Cathy Melendez and seconded by Amy McGovern, Carried.

**Superintendent Items:**

Amend motion to table approving the design development phase and proceeding with construction document phase until August 8 meeting to gather more information. DLR is authorized to continue work on the project for the next two weeks. This motion, made by Amy McGovern and seconded by Chris Misselt, Carried. Voting Nay: Melendez.

Motion to approve quote from Geo Enterprises Inc. for thermal conductivity testing at new elementary site in the amount of \$13,163.29. This motion, made by Chris Misselt and seconded by Amy McGovern, Carried. Voting Nay: Misselt

**Fiscal Resources Items:**

Motion to approve additional supplemental budget in the amount of \$487,712.80. This motion, made by Amy McGovern and seconded by Cathy Melendez, Carried.

Motion to approve the grant supplemental budgets as presented for AFJROTC; ESSER II; ESSER III; MTSS; Title I, 1003; Title I, Part A; Title IV, Part A; and Title VI. This motion, made by Amy McGovern and seconded by Cathy Melendez, Carried.

Motion to approve resolution to transfer impact aid funds. This motion, made by Amy McGovern and seconded by Tonya Amaral, Carried.

Adaptive Schools Trainer Toni Prickett presented strategies for navigating difficult conversations and listening to understand during a board work session. This is the second part of board-level training as the Board prepares to work on the district strategic direction.

Motion to adjourn meeting at 7:38 p.m. This motion, made by Amy McGovern and seconded by Cathy Melendez, Carried.

\_\_\_\_\_  
Tanya Gray, President

\_\_\_\_\_  
Trista Olney, Business Manager

\_\_\_\_\_ Initials

\_\_\_\_\_ Date

Published once at the total approximate cost of \_\_\_\_\_.

**DOUGLAS SCHOOL DISTRICT****PERSONNEL ACTION 8/8/2022****Classified Authorization Amendments**

Jordan Patterson	HS/FSW	Revised pay wage for 2022-23 school year \$14.25 per hour	

**Employee Leave of Absence Requests**

<b>Name</b>	<b>Building</b>	<b>DATES</b>	
Olivia Gotta	PAT ELEM/FC 2nd	Aug 13- Nov 28, 2022	Maternity Leave
Thomas Hancock	MS ART	Aug 15- Oct 24 , 2022	Medical Leave

**Certified Resignations/Retirements/Terminations**

<b>Name</b>	<b>Position</b>	<b>Location</b>	<b>Effective Date</b>
Ashley Gomez	Speech Language Pathologist	Douglas Middle School	2022-2023 School Year Assessed \$2000 for Liquidated Damages as per terms of her contract
Joie Drysdale	0.5 Title VI	Douglas Middle School	2022-2023 School Year Assessed \$2000 for Liquidated Damages as per terms of her contract

**Classified Resignations/Retirements/Terminations**

<b>Name</b>	<b>Position</b>	<b>Location</b>	<b>Effective Date</b>
Daniel Maciejczak	Security	Douglas High School	2022-2023 School Year

**Certified Voluntary Transfer Request**

<b>Name</b>	<b>From Bldg/Position</b>	<b>To Bldg/Position</b>	<b>Effective Date</b>
Lindsay Scott	VES/Music	MS/Music	2022-2023 School Year

**Certified Staff Hiring**

<b>Name</b>	<b>Position</b>	<b>Location</b>	<b>Effective Date</b>
Nicole Rietz	SLP	Douglas School District	2022-2023 School Year
Ainsley Monize	SLP	Douglas School District	2022-2023 School Year

**Classified Staff Hiring**

<b>Name</b>	<b>From Bldg/Position/Hrs</b>	<b>Salary</b>	<b>Effective Date</b>
Kathy Minney	DMS/Library Aide	E/2 188 days 8 hrs/day \$15.75 per hour	2022-2023 School Year
Pamila Scherer	CO/Accounts Payable Bookkeeper	J/7 261 days 8hrs/day \$23.00 per hour	2022-2023 School Year
Charlotte Warren	MS/ ISS Paraprofessional	E/2 188 days 7.5 hrs/day \$15.75 per hour	2022-2023 School Year

<b>Contracted Activity Hires</b>				
	<b>Name</b>	<b>Position</b>	<b>Salary</b>	<b>Effective Date</b>
	Amanda Awe	HS Assistant Debate Coach - 1 Year Only	\$2,197.00 per year	2022-2023 School Year
	Brook Clark	HS Girls Assistant Freshman Basketball Coach - 1 Year Only	\$3,959.00 per year	2022-2023 School Year
	Michael Clark	HS Assistant Volleyball Coach - 1 Year Only	\$4,082.00 per year	2022-2023 School Year
	Michael Clark	HS Assitant Track and Field Coach- 1 Year Only	\$2,231.00 per year	2022-2023 School Year
	Andrew Napier	HS Head Boys Soccer Coach - 1 Year Only	\$5,589.00 per year	2022-2023 School Year
	Robert Rath	MS 8th Grade Assistant Football Coach - 1 Year Only	\$2,197.00 per year	2022-2023 School Year
	Duncan Stoebner	MS 7th Grade Assistant Football Coach - 1 Year Only	\$2,197.00 per year	2022-2023 School Year
	Sarah Tucker	HS Head Volleyball Coach - 1 Year Only	\$3,330.00 per year	2022-2023 School Year
<b>Temporary Hires</b>				
	<b>Name</b>	<b>Position</b>	<b>Salary</b>	<b>Effective Date</b>
	Tammy Koch	MA/DR- Prepared vehicles for customers	\$22.83 per hour	July 25-26, 2022
	Tammy Koch	MA/DR- Summer Transport of Students	\$22.83 per hour	July 21, 2022
<b>Substitute Hires</b>				
	<b>Name</b>	<b>Position</b>	<b>Salary</b>	<b>Effective Date</b>
	Rena Small	Substitute Secretary Personnel office	\$15.75 per hour	July 25- August 1, 2022
**	Personnel Action additions and updates made after intial publication and before scheduled school board meeting.			

<b>June 1, 2022 FINANCIAL</b>	<b>GENERAL FUND</b>	<b>CAPITAL OUTLAY</b>	<b>SPECIAL EDUCATION</b>
BALANCE 05/ 31/ 22	(\$261,960.40)	\$266,461.55	\$2,066,014.91
RECEIPTS:			
TAXES	\$326,216.33	\$224,037.18	\$143,390.69
TUITION			
INTEREST	\$183.35		
ADMISSIONS			
LOCAL	\$7.36	\$125.09	
COUNTY	\$20,043.58		
STATE	\$1,154,196.00		\$119,119.00
FEDERAL			\$41,658.00
OTHER	\$2,527.00		
INTERFUND TRAN. LOANS	\$4,502,098.53	\$625,000.00	
TOTAL RECEIPTS:	\$6,005,272.15	\$849,162.27	\$304,167.69
DISBURSEMENTS:			
VERIFIED CLAIMS	\$718,518.22	\$311,225.95	\$10,824.80
SALARIES	\$1,739,302.96	\$0.00	\$274,003.80
TRANSFERS OUT			
<b>BALANCE 06/30/22</b>	<b>\$3,285,490.57</b>	<b>\$804,397.87</b>	<b>\$2,085,354.00</b>
BALANCE 06/ 30/ 21	2,124,156.17	3,675,853.41	2,344,817.82

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<b>June 1, 2022 FINANCIAL</b>	<b>FEDERAL PROJECTS</b>	<b>UNEMPLOY- MENT FUND</b>
BALANCE 05/ 31/ 22	(\$1,120,132.89)	\$50,823.66
RECEIPTS:		
TAXES		
INTEREST		
LOCAL		
STATE		
FEDERAL		
PREMIUMS		
REIMBURSEMENTS	\$87,474.25	
OTHER (LOCAL) -AFROTC		
INTERFUND TRAN.		
OTHER (LOCAL) -LIBRARY		
TRANSFER IN		
TOTAL RECEIPTS:	\$87,474.25	\$0.00
DISBURSEMENTS:		
VERIFIED CLAIMS	\$21,553.28	\$0.00
SALARIES	\$192,378.52	\$0.00
TRANSFERS OUT		
EXPENDITURES		
<b>BALANCE 06/30/22</b>	<b>(\$1,246,590.44)</b>	<b>\$50,823.66</b>
BALANCE 06/ 30/ 21	(342,855.87)	55,338.70

<b>June 1, 2022 FINANCIAL</b>	<b>DEP CARE</b>	<b>ENTERPRISE</b>	<b>IMPACT AID</b>
BALANCE 05/ 31/ 22	\$728.48	\$4,714.21	\$24,349,102.54
RECEIPTS:			
INTEREST			\$2,098.53
TUITION			
STATE			
FEDERAL			\$3,574,334.00
LOCAL	\$291.52		
OTHER			
INTERFUND TRAN.			\$150,000.00
LOANS			
PREMIUMS			
TOTAL RECEIPTS:	\$291.52	\$0.00	\$3,726,432.53
DISBURSEMENTS:			
VERIFIED CLAIMS	\$884.93	\$0.00	\$0.00
SALARIES	\$0.00	\$0.00	\$0.00
EXPENDITURES/ TRANSFERS OUT			\$5,127,098.53
<b>BALANCE 06/30/22</b>	<b>\$135.07</b>	<b>\$4,714.21</b>	<b>\$22,948,436.54</b>
BALANCE 06/ 30/ 21	374.93	8,750.03	19,055,850.54

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<b>June 1, 2022 FINANCIAL</b>	<b>FOOD SERVICE</b>	<b>FIDUCIARY FUNDS</b>	<b>MEDICAL REIMB-125</b>
BALANCE 05/ 31/ 22	\$439,987.49	\$223,300.60	\$2,755.76
RECEIPTS:			
INTEREST			
SALES	\$115.80		
STATE	\$3,418.45		
FEDERAL	\$162,978.21		
LOCAL	\$1,018.71	\$45,382.83	\$1,985.63
OTHER			
INTERFUND TRAN.			
LOANS			
TOTAL RECEIPTS:	\$167,531.17	\$45,382.83	\$1,985.63
DISBURSEMENTS:			
VERIFIED CLAIMS	\$243,319.23	\$13,495.68	\$3,056.54
SALARIES	\$20,676.74	\$0.00	\$0.00
<b>BALANCE 06/30/22</b>	<b>\$343,522.69</b>	<b>\$255,187.75</b>	<b>\$1,684.85</b>
BALANCE 06/ 30/ 21	20,433.42	188,813.03	4,284.97

**Board Report - For School Board 08/15/2022**

<u>Vendor Name</u>	<u>Check #</u>	<u>Expensed</u>	<u>Amount</u>
95 % GROUP INC	181014		814.00
ABERLE. JIM	181015		650.00
BAKER TIMBER PRODUCTS	180988	X	700.00
BATTERIES PLUS BULBS #934	181016		46.80
BERS WINDY FLATS RUBBLE SITE	181017		318.00
BLACK HILLS DOOR SYSTEMS. INC.	181018		230.40
BLICK ART MATERIALS	181019		845.88
BOX ELDER HARDWARE	181020		314.70
BRANDON VALLEY SCHOOL DISTRICT 49-2	181021		1,781.00
BRIGHTLY SOFTWARE	181022		12,135.44
CARQUEST AUTO PARTS	181023		460.54
CENTURYLINK	180992	X	450.45
CITY OF BOX ELDER/PUBLIC WORKS DEPT	181026		5,125.74
CLARK. MICHAEL	181027		46.00
CLIMATE CONTROL SYSTEMS AND SERVICE	181028		755.22
COMFORT INN & SUITES	181029		457.50
CONTRACTORS INSULATION & DRYWALL	181030		1,465.60
DAKOTA BUS SERVICE. INC.	180995	X	2,945.00
DAYS INN IOWA	180987		342.40
EDLIO INC	181032		7,200.00
EMC INSURANCE COMPANIES	180981		346,590.00
EVERGREEN OFFICE PRODUCTS	181033		535.00
FIDUCIARY ACCOUNT	181034		1,483.75
FLINN SCIENTIFIC INC	181035		720.73
FRERICHS. BENJAMIN	180997	X	10.08
FRONTLINE TECHNOLOGIES GROUP LLC	181037		28,117.34
GRAINGER. INC	181038		471.75
GRAY. TANYA	180998	X	35.28
GREAT WESTERN TIRE COMPANY	181039		3,273.28
GRIMMS PUMP SERVICE. INC.	181040		38.41
HANK'S SPECIALTIES INC	180987		240.23
HARLOW'S BUS SALES. INC.	181041		360.74
HILLYARD INC	181042		143.03
HILTON - CREDIT CARD	180987		5,558.08
INFINITE CAMPUS	181044		16,399.95

**Board Report - For School Board 08/15/2022**

<u>Vendor Name</u>	<u>Check #</u>	<u>Expensed</u>	<u>Amount</u>
INSTITUTE MULTI-SENSORY EDUCATION	181045		336.00
INTEGRATED TECHNOLOGY & SECURITY	181046		405.00
KIEFFER SANITATION. INC.-AUTO PAY	180999	X	1,912.84
KILOWATT ELECTRIC INC.	181047		1,401.00
LODGE AT DEADWOOD. THE	181001	X	298.00
LOWE'S BUSINESS ACCOUNT	181050		354.09
LYNN JACKSON SHULTZ & LEBRUN PC INC	181051		2,366.00
MATURANO. OSCAR	181052		844.00
MAXON. SHANNON	181053		40.24
MCGOVERN. AMY	181003	X	26.88
MELENDEZ. CATHLEEN	181004	X	79.92
MENARDS	181054		1,334.75
MG OIL COMPANY. INC.	181055		2,998.19
MIDWEST BUS PARTS. INC.	181056		1,033.11
MIDWEST CONNECT	181057		718.00
MINILOTS	181058		170.83
MONTANA DAKOTA UTILITIES COMPANY. INC.	181059		1,577.57
MOSYLE CORPORATION	181060		5,104.00
NAFIS	181061		5,555.97
NASSP	181062		385.00
NOVUS GLASS REPAIR & REPLACEMENT	181064		325.00
OLNEY. TRISTA	181065		104.40
OLSON-CANAAN. CHANDRA	181066		520.64
PENNINGTON COUNTY SHERIFF	181006	X	49,379.50
POPPLER'S MUSIC INC	181067		263.75
PROGRESS PUBLICATIONS	181068		976.50
RAPID CITY JOURNAL	181069		1,159.52
RIO GRANDE	181070		2,727.18
RIVERSIDE TECHNOLOGIES INC	181072		15,995.00
RSP & ASSOCIATES LLC	181007	X	15,000.00
SAM'S CLUB	180987		207.94
SANFORD HEALTH OCCMED	181008	X	395.00
SCENARIO LEARNING. LLC	181073		4,428.00
SCHOOL NURSE SUPPLY	181075		84.49
SCHOOL SPECIALTY INC.	181076		711.01

**Board Report - For School Board 08/15/2022**

<u>Vendor Name</u>	<u>Check #</u>	<u>Expensed</u>	<u>Amount</u>
SD HIGH SCHOOL COACHES ASSOC	181077		150.00
SD TEACHER PLACEMENT CENTER	181078		435.00
SDSLHA	181079		125.00
SEAT SACK	181080		764.05
SHERWIN WILLIAMS	181009	X	114.03
SHI INTERNATIONAL CORP.	181081		14,648.00
SOFTWARE UNLIMITED INC	181082		5,290.00
SOUTH DAKOTA ONE CALL	181010	X	121.80
SUMMIT COMPANIES	181083		3,894.00
TACO JOHNS RAPID CITY	180987		672.50
TAXI CHARGES	180987		72.50
TEACHERS DISCOVERY	181084		446.07
TUCKER. SARAH	181085		888.00
TW ENTERPRISES INC	181012	X	685.98
UNITED AIR LINES	180987		562.20
UNITY SCHOOL BUS PARTS. INC.	181086		335.67
V.I. REED & CANE INC	181087		523.80
VANWAY TROPHY & AWARD. INC.	181088		87.40
VERIZON WIRELESS	181013	X	444.37
WAL-MART STORES INC	180987		375.00
WEBSTAURANT STORE	180987		221.39
<b>GENERAL FUND</b>			<hr/> 591,138.40
BLACK HILLS EXTERIORS	180989	X	9,745.00
CENTRAL RESTAURANT PRODUCTS	181025		11,986.43
CENTURY BUSINESS	180991	X	3,476.73
CO-OP ARCHITECTURE	180994	X	428,763.54
KLJ ENGINEERING LLC	181000	X	14,850.00
RIVERSIDE TECHNOLOGIES INC	181072		101,465.00
<b>CAPITAL OUTLAY</b>			<hr/> 570,286.70
CPI	181031		1,885.54
NCS PEARSON. INC.	181063		1,325.63
RIVERSIDE INSIGHTS	181071		1,545.50
SCHOLASTIC INC.	181074		72.48
SCHOOL NURSE SUPPLY	181075		390.50
<b>SPECIAL ED</b>			<hr/> 5,219.65
WEBSTAURANT STORE	180987		3,165.65

**Board Report - For School Board 08/15/2022**

<u>Vendor Name</u>	<u>Check #</u>	<u>Expensed</u>	<u>Amount</u>
<b>FOOD SERVICE</b>			<u>3,165.65</u>
CASE, KEVIN	181024		93.48
FOOD SERVICE	180996	X	85.00
FRANCK, SYDNEY	181036		500.00
IMAGINE LEARNING INC	181043		100.00
LEADERSHIP MATTERS LLC	181048		859.79
LEXIA	181049		17,000.00
RIVERSIDE TECHNOLOGIES INC	181072		8,000.00
WAL-MART STORES INC	180987		87.85
<b>GRANTS</b>			<u>26,726.12</u>
			<u>1,196,536.52</u>
CASH-WA DISTRIBUTING COMPANY, INC.	11827		484.29
INFINITE CAMPUS	11828		6,727.20
LEBLOND, THERESE	11829		44.00
PAN-O-GOLD BAKING COMPANY, INC.	11830		712.59
PRAIRIE FARMS	11831		957.61
SCHUCH, RON	11832		34.70
SORENSEN, KURSHAWN	11833		25.10
<b>FOOD SERVICE</b>			<u>8,985.49</u>
			<u>8,985.49</u>
Grand Total:			<u>1,205,522.01</u>

**PAYROLL EXPENDITURES**

**JULY 7 2022**

**JULY 21 2022**

**TOTALS**

**\$885,362.15**

**\$820,835.25**

**Douglas School District 51-1  
CONFLICT OF INTEREST DISCLOSURE**

This is a Public Document

Name of the school official requesting the waiver: Tanya Gray

The disclosure is for the purpose of notifying the School Board of Douglas School District of:

- an interest in a contract
- a direct benefit from a contract

Identify the following:

- a) all parties to the contract: Michael Clark
- b) the person's role in the contract: Activities Secretary, volleyball and basketball coach, activities worker
- c) the purpose(s)/objective(s) of the contract: - per job description
- d) the consideration or benefit conferred or agreed to be conferred upon each party: - per Douglas School District contract general application
- e) the length of the contract: yearly 2022-2023
- f) any other relevant information: WCA

If the disclosure relates to the school official deriving a direct benefit from a contract, explain how the terms of the contract are fair, reasonable, and not contrary to the public interest such that authorization should be granted by the school board.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Signature of School Official

8/1/22  
Date

**Douglas School District 51-1**  
**SCHOOL BOARD ACTION ON CONFLICT OF INTEREST DISCLOSURE**  
**OF A DIRECT BENEFIT**  
THIS IS A PUBLIC DOCUMENT

Conflict of Interest Disclosure of a Direct Benefit, dated August 1, 2022

was received from Tanya Gray, board member.

The Disclosure was considered by the Douglas School District School Board during a meeting held on August 8, 2022.

\_\_\_\_\_ The request for authorization was denied because the terms of the contract were determined to not be fair and reasonable, and/or were contrary to the public interest.

\_\_\_\_\_ The direct benefit from the contract was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest.

\_\_\_\_\_ The direct benefit was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest such that a waiver should be granted, subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

August 8, 2022  
Date

\_\_\_\_\_  
School Board President Signature

\_\_\_\_\_  
Printed Name

\*\*\*\*\*  
Upon School Board approval of the official minutes of the meeting when the School Board acted upon the above Conflict of Interest Disclosure, a copy of the official minutes will be emailed to the Auditor General and mailed to the Attorney General.

**Douglas School District 51-1  
CONFLICT OF INTEREST DISCLOSURE**

This is a Public Document

Name of the school official requesting the waiver: Tanya Gray

The disclosure is for the purpose of notifying the School Board of Douglas School District of:

- an interest in a contract
- a direct benefit from a contract

Identify the following:

- a) all parties to the contract: Brook Clark
- b) the person's role in the contract: Sub, Spec Educ Aide, Teacher, Coach, activities worker
- c) the purpose(s)/objective(s) of the contract: - per job description
- d) the consideration or benefit conferred or agreed to be conferred upon each party: - per Douglas School District Contract general application
- e) the length of the contract: years, 2022-2023
- f) any other relevant information: ya

If the disclosure relates to the school official deriving a direct benefit from a contract, explain how the terms of the contract are fair, reasonable, and not contrary to the public interest such that authorization should be granted by the school board.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Signature of School Official

8/1/22  
\_\_\_\_\_  
Date

**Douglas School District 51-1**  
**SCHOOL BOARD ACTION ON CONFLICT OF INTEREST DISCLOSURE**  
**OF A DIRECT BENEFIT**  
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\_\_\_\_\_ The direct benefit was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest such that a waiver should be granted, subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

August 8, 2022  
Date

\_\_\_\_\_  
School Board President Signature

\_\_\_\_\_  
Printed Name

\*\*\*\*\*  
Upon School Board approval of the official minutes of the meeting when the School Board acted upon the above Conflict of Interest Disclosure, a copy of the official minutes will be emailed to the Auditor General and mailed to the Attorney General.





**DRAFT**

**Douglas School District  
Strategic Direction  
Draft I Timeline  
8/3/2022**

**DRAFT**

**PHASE I:     **SETTING THE STAGE/PLANNING:****

- Spring/Summer 2022
  - Securing Consultants (Ellie Martinez/Riggs Enterprises/ThoughtExchange)
  - Adaptive Schools Training - 140+ Staff Trained + Diltz and Values & Beliefs
  - Collaboratively Developing Plan for stakeholder input into Values & Beliefs

**PHASE II:     **INVITING AND GATHERING INPUT FROM ALL STAKEHOLDERS:****

- August 2022
  - Early August
    - Explain/Share Strategic Direction Process with BOE and Administrative Team
  - August 15 - 18
    - Stakeholder Input Sessions (**ALL** DSD Staff, Community, and BOE)\*
  - August 19
    - Share Initial, Draft Trend Information at Back To School Assembly

**PHASE III:     **REVIEW, CLARIFY, GATHER ADDITIONAL INFORMATION WHERE APPROPRIATE, ORGANIZE, AND PRIORITIZE DATA SET:****

- Fall 2022
  - Identify Representative Stakeholder Group (+/- 25 Stakeholders)
  - Stakeholder Group Prioritize/Clarify Values & Beliefs →
  - Stakeholder Group Inform and Gain Feedback from group they represent
  - Repeat process as needed to gain sufficient consensus (85% +/-)

**PHASE IV:     **FINALIZING THE PLAN:****

- Late Fall 2022 - Early Winter 2023
  - .

**PHASE V:     **IMPLEMENTATION OF THE PLAN:****

- Winter 2023 (After January 1, 2023)
  -

\*Sufficient Consensus - When approximately 80-85% of the stakeholders agree to the concepts and the remaining 15-20% agree to disagree and not to sabotage the implementation of the process.

## Success Criteria

# Success Criteria



#1

I have a better understanding of my role within the larger Douglas School Community



#2

I contributed to the thinking of my system's Core Values



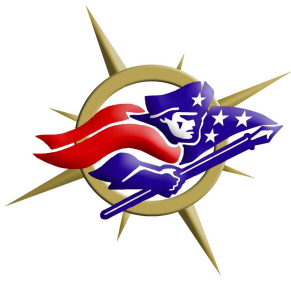
#3

I feel my voice, thoughts and input are valued and I see how they connect to my community and system



#4

I understand my behaviors will continue to evolve as the system becomes clearer on Core Values and Beliefs



# DOUGLAS SCHOOL DISTRICT 51-1

## ADMINISTRATIVE OFFICE

400 Patriot Drive • Box Elder, SD 57719-9749 • 605-923-0000  
Mr. Bud Gusso, Executive Director of Operational Support Services

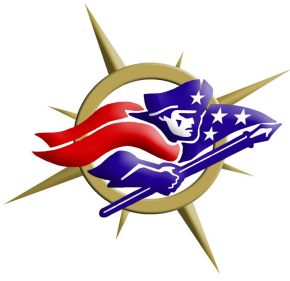
Date: 7/20/2022

To: Douglas District Board of Education  
Fr: Bud Gusso, Executive Director of Operational Support Services

Re: Job Descriptions proposed for Deletion

The following job titles and accompanying descriptions are no longer utilized by the Douglas District, and should be formally deleted. This list has been reviewed and approved by the appropriate department/school administrator.

5:18-1	BUILDING MAINTENANCE SKILLED (HEATING & PLUMBING)	YES	2/13/2012
	GUIDE FOR PROFESSIONAL IMPROVEMENT		8/1/1989
3:60	ADULT BASIC EDUCATION TEACHER	YES	2/11/1992
3:03	DIRECTOR OF ELEMENTARY CURRICULUM	YES	6/14/1999
3:64	DIRECTOR OF LIBRARY SERVICES	YES	2/11/92; 4/14/09; 1/31/11; 2/24/14
3:24-1	LITERACY EDUCATOR	YES	6/14/1999; 7/9/12
3:24-2	MATH EDUCATOR	YES	6/28/2012
3:08	PROGRAM DIRECTOR	YES	2/11/1992
3:58	TEACHER OF GIFTED	YES	2/11/1992
2:02	ASSISTANT SUPERINTENDENT- CURRICULUM & INSTRUCTION	YES	2/11/1992
3:01	ASST SUPT OF CURRICULUM, INSTRUCTION & TECHNOLOGY	YES	9/22/92; 1/9/06; 1/10/11; 1/27/14; 11/23/15
3:08-1	COMMUNITY EDUCATION DIRECTOR	YES	2/11/1992
3:69-1	COMMUNITY LIBRARY AIDE	YES	1/31/2011; 2/14/11
2:39	COMPUTER MANAGER	YES	2/11/92; 3/25/96
2:30-2	ELEMENTARY COMPUTER CLERK	YES	2/11/1992
2:29-2	INSTRUCTIONAL MATERIALS CENTER SECRETARY	YES	2/11/1992
2:32-2	INSTRUCTIONAL MATERIALS CENTER SECRETARY	YES	2/24/2014
2:32	INSTRUCTIONAL MATERIALS CENTER SECRETARY (CIRCULATION)	YES	2/11/1992; 2/14/11
2:32-1	INSTRUCTIONAL MATERIALS CENTER SECRETARY (PROCESSING)	YES	2/11/1992; 2/14/11
3:14	INSTRUCTOR FOR SUBSTANCE ABUSE PREVENTION K-12	YES	2/11/1992
3:07-2	INTERIM ELEMENTARY ASSISTANT PRINCIPAL FOR BC & CARR	YES	2/11/1992
2:45	PRESS OPERATOR I	YES	2/11/1992
5:11-1	WAREHOUSE/DELIVERY ASSISTANT	YES	8/11/2003; 6/14/10; 7/14/14
5:33-2	DISHWASHER/SERVER	YES	2/11/1992
5:33-1	A LA CARTE SERVER FOOD SERVICES	YES	2/11/1992
5:32-1	CASHIER FOOD SERVICES	YES	2/11/1992
5:32	CLERK/CASHIER FOOD SERVICES	YES	2/11/1992
5:33-3	FOOD SERVICE HELPER	YES	2/11/1992
5:33	SERVER(HEAD POSITION) FOOD SERVICES	YES	2/11/1992



# DOUGLAS SCHOOL DISTRICT 51-1

## ADMINISTRATIVE OFFICE

400 Patriot Drive • Box Elder, SD 57719-9749 • 605-923-0000  
 Mr. Bud Gusso, Executive Director of Operational Support Services

3:24	GENERAL EDUCATOR	YES	6/14/1999
3:68-5	TECHNOLOGY BUILDING SUPPORT SPECIALIST	YES	7/1/2010
3:68-7	TECHNOLOGY HELP DESK & SERVER SUPPORT	YES	5/14/2012; 8/15/16
3:68-6	TECHNOLOGY NETWORK & SERVER SUPPORT	YES	5/14/2012
3:28-1	BEFORE/AFTER CHILD CARE SUPERVISOR	YES	6/27/94; 8/25/97
3:28-3	BEFORE/AFTER SCHOOL SITE ASSISTANT	YES	6/27/2005
3:28-2	BEFORE/AFTER SCHOOL SITE COORDINATOR	YES	6/27/2005
3:56-2	BEHAVIOR MODIFICATION TEACHER	YES	6/14/1999
3:56-1	BEHAVIOR RESOURCE TEACHER	YES	10/13/1992
3:27-2	CHILD CARE ASSISTANT/KINDERGARTEN ENRICHMENT	YES	6/27/94; 8/25/97
3:25-2	CHILD CARE ASSOCIATE SUPERVISOR	YES	6/27/94; 6/12/95; 8/25/97
2:29-1	CHILD CARE SERVICES PROGRAM SECRETARY	YES	2/11/9; 3/25/; 8/25/97
3:27	CHILD CARE/NURSERY SCHOOL ASSOCIATE TEACHER	YES	2/11/92; 8/25/97
3:28	CHILD CARE/PRESCHOOL AIDE	YES	6/27/2005
3:25-3	PRESCHOOL SUPERVISOR	YES	5/11/2015
5:36-1	MECHANIC/DRIVER	YES	2/11/1992
3:54	TITLE I DIAGNOSTICIAN	YES	2/11/1992; 5/28/02
3:55	TITLE I TUTOR	YES	2/11/1992
5:11	WAREHOUSE/PRODUCTION CLERK	YES	1/8/1996; 8/11/03; 8/11/14

 **AIA<sup>®</sup> Document A133<sup>™</sup> – 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    in the year  
*(In words, indicate day, month, and year.)*

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

Douglas School District  
400 Patriot Drive  
Box Elder, South Dakota 57719  
Telephone Number: (605)923-0000

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

Heavy Constructors, Inc., a South Dakota corporation doing business as Gustafson Builders  
4101 Deadwood Ave.  
Rapid City, SD 57702  
605-342-3152

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

New Douglas High School  
Box Elder, SD  
A new facility to serve approximately 1400 students with the program attached in Exhibit D.

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

CO-OP Architecture  
601 Kansas City Street Suite 7 Rapid City, SD 57701

Telephone Number: 605-716-3652

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<sup>™</sup>–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.

## TABLE OF ARTICLES

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

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

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

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

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

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

Specific spaces needed will include those identified in Exhibit D which is attached and incorporated by this reference.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

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

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

See Total Estimated Project Budget in Attached Exhibit C

Init.

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

- .1 Design phase milestone dates, if any:  
**All dates below are contingent on project funding:**  
Schematic Design – March 2022  
Design Development – March 2022  
Construction Documents – April 2022  
Bidding & Negotiation – September 2022
- .2 Construction commencement date:  
On or near Spring 2023
- .3 Substantial Completion date or dates:  
On or near October 2024
- .4 Other milestone dates:

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

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

NA

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

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

Bud Guzzo  
400 Patriot Drive  
Box Elder, South Dakota 57719  
Telephone Number: (605)923-0000  
Email Address: bud.gusso@k12.sd.us

Jace Waltman  
400 Patriot Drive  
Box Elder, South Dakota 57719

Init.

Telephone Number: (605)923-0000  
Email Address: jace.waltman@k12.sd.us

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

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

.1 Geotechnical Engineer:

FMG Engineering  
Alex Fisher  
3700 Sturgis Road  
Rapid City, South Dakota 57702  
Telephone Number: (605)342-4105

.2 Civil Engineer:

FMG Engineering  
Jerry Foster  
3700 Sturgis Road  
Rapid City, South Dakota 57702  
Telephone Number: (605)342-4105

.3 Other, if any:

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

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

Jared Carda  
601 Kansas City Street Suite 7  
Rapid City, SD 57701  
Telephone Number: (605)716-3652  
Email Address: jared@co-oparch.com

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

Bob Wessel  
Vice President of Building Division  
Gustafson Builders – Heavy Constructors, Inc.  
4101 Deadwood Ave.  
Rapid City, SD 57702  
605-342-3152

Init.

/

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

*(List any Owner-specific requirements to be included in the staffing plan.)*

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

*(List any Owner-specific requirements for subcontractor procurement.)*

Bids shall be received in sealed envelopes and opened publicly with the Owner, Architect, and Construction Manager present. Bidding shall be in compliance with applicable statutes. If Construction Manager wishes to bid on subcontracts, Construction Manager must submit to Owner a proposal for a process for Construction Manager to submit its sealed bid prior to other bidders and in compliance with state law.

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

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

§ 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 subcontracted out by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall follow instructions as noted in AIA Document A2017-2017 Section 1.7 for digital data use and transmission.

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

### **§ 3.1.6 Cost Estimates**

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

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

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

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

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

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

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

### **§ 3.1.11 Subcontractors and Suppliers**

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

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project.

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

### **§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### **§ 3.1.13 Compliance with Laws**

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

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 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 shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 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.

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

### § 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 Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### § 3.3.2 Administration

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

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

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 Cost Control

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

## ARTICLE 4 OWNER’S RESPONSIBILITIES

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner

shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. 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.

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

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

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

**§ 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:

Init.

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**User Notes:**

(1446271595)

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

Thirty thousand dollars (\$30,000.00) upon completion and delivery of the Guaranteed Maximum Price. The Guaranteed Maximum Price is to be delivered at 100% Construction Documents Phase upon determination of a bid date. The construction document delivery phase has been completed. However, with funding dates to be determined, a bid date has not been set. Therefore, a GMP cannot be delivered at this time. All parties agree, at this time, that a partial payment of Preconstruction Phase services will be paid be at 75% of the proposed preconstruction services fee for a total of twenty-two thousand five hundred dollars (\$22,500.00) with the remainder of the fee to be paid upon delivery of the GMP.

**§ 5.1.2** The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

All costs associated with preconstruction are included in the \$30,000.00 fee.

Individual or Position	Rate
------------------------	------

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

**§ 5.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within six(6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 5.2 Payments**

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

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. If the invoice is presented to the Owner by the 1<sup>st</sup> day of a month, the invoice will be paid by the 25<sup>th</sup> day of the same month. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
*(Insert rate of monthly or annual interest agreed upon.)*

Five percent (5 %) 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.

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

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

Fee to be charged on cost of Work is 2.90%. All remaining buyout savings, contingency, and extra reimbursables/allowances not used as part of the cost of Work shall be returned to the Owner.

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

No adjustment needed since fee is percentage.

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

Init.

Subcontractor shall not exceed more than 8% overhead and 5% profit.

*(Paragraph deleted)*

§ 6.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

§ 6.1.7 Other:

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

## § 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 costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 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.

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## § 7.2 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

*(Paragraphs deleted)*

## § 7.3 Miscellaneous Costs

§ 7.3.1 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.3.2 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.

§ 7.3.3 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.

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

§ 7.3.4.1 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.

§ 7.3.5 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.

## § 7.4 Other Costs and Emergencies

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

§ 7.4.2 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.

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

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

## § 7.5 Related Party Transactions

§ 7.5.1 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.

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

*(Paragraphs deleted)*

#### **§ 7.6 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 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; and
- .9 Costs for services incurred during the Preconstruction Phase.

*(Paragraphs deleted)*

#### **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.

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** The Work, other than management, shall be performed under subcontracts. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

## ARTICLE 10 ACCOUNTING RECORDS

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect certified to the Owner not later than the 1<sup>st</sup> day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25<sup>th</sup> day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than the 25<sup>th</sup> day of the next month after the Architect receives the Application for Payment.

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

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

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

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§ 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.

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

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

#### § 11.1.8 Retainage

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

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

5% retainage to be withheld until Substantial Completion of Project

§ 11.1.8.1.1 The following items are not subject to retainage:

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

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:  
*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

**§ 11.1.9** 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** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** 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;
- .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.

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

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

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

**§ 11.3 Interest**

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

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

| 5 % 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 Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

**§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

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[ X ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

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

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

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

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to 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

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

### § 13.2.3 Termination by the Owner for Convenience

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

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

None.

## § 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.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than Three Million Dollars and Zero Cents (\$3,000,000.00) for each occurrence and Five Million Dollars and Zero Cents (\$5,000,000) 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 not less than Three Million Dollars and Zero Cents (\$ 3,000,000.00 ) 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 One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each employee, and Three Million Dollars and Zero Cents (\$ 3,000,000.00 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services will not be required because Contractor will not be providing any professional services.

#### § 14.3.1.6 Other Insurance

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

Coverage	Limits
Builders Risk "All Risk"	Insure the entire project for the full cost of replacement at the time of any loss
Payment and Performance Bonds	100% of the amount of the Guaranteed Maximum Price

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

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

#### § 14.3.2 Construction Phase

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

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

Init.

**§ 14.4** Other provisions:

This Agreement depends and is contingent upon the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature and other governmental funding sources for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the Owner. Termination for any of these reasons is not a default by the Owner nor does it give rise to a claim against the Owner.

Davis-Bacon Act. The Contractor shall comply with the terms of the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). The Contractor shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Contractor shall pay wages not less than once a week. This Agreement is conditioned upon the Contractor's acceptance of the wage determination. Any suspected or reported violations will be reported to the Federal awarding agency.

*(Paragraphs deleted)*

**ARTICLE 15 SCOPE OF THE AGREEMENT**

**§ 15.1** 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.

**§ 15.2** The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .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

*(Paragraphs deleted)*

- .5 Other Exhibits:  
*(Check all boxes that apply.)*

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Exhibit C	Douglas High School – New HHS Budget Summary		1
Exhibit D	Vision – New 1400 Student Douglas High School	08-13-2021	7

- .6 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

**OWNER** *(Signature)*

Kevin Case, Superintendent, Douglas School District  
*(Printed name and title)*

**CONSTRUCTION MANAGER** *(Signature)*

David Gustafson, President  
*(Printed name and title)*

Init.

# **Additions and Deletions Report for** **AIA® Document A133™ – 2019**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:56:17 ET on 07/11/2022.

## **PAGE 1**

Douglas School District  
400 Patriot Drive  
Box Elder, South Dakota 57719  
Telephone Number: (605)923-0000

...

Heavy Constructors, Inc., a South Dakota corporation doing business as Gustafson Builders  
4101 Deadwood Ave.  
Rapid City, SD 57702  
605-342-3152

...

New Douglas High School  
Box Elder, SD  
A new facility to serve approximately 1400 students with the program attached in Exhibit D.

...

CO-OP Architecture  
601 Kansas City Street Suite 7 Rapid City, SD 57701

...

Telephone Number: 605-716-3652

## **PAGE 2**

Specific spaces needed will include those identified in Exhibit D which is attached and incorporated by this reference.

...

See Total Estimated Project Budget in Attached Exhibit C

## **PAGE 3**

### **All dates below are contingent on project funding:**

Schematic Design – March 2022

Design Development – March 2022

Construction Documents – April 2022

Bidding & Negotiation – September 2022

...

On or near Spring 2023

...

On or near October 2024

...

NA

...

Bud Guzzo  
400 Patriot Drive  
Box Elder, South Dakota 57719  
Telephone Number: (605)923-0000  
Email Address: bud.gusso@k12.sd.us

Jace Waltman  
400 Patriot Drive  
Box Elder, South Dakota 57719  
Telephone Number: (605)923-0000  
Email Address: jace.waltman@k12.sd.us

**PAGE 4**

FMG Engineering  
Alex Fisher  
3700 Sturgis Road  
Rapid City, South Dakota 57702  
Telephone Number: (605)342-4105

...

FMG Engineering  
Jerry Foster  
3700 Sturgis Road  
Rapid City, South Dakota 57702  
Telephone Number: (605)342-4105

...

Jared Carda  
601 Kansas City Street Suite 7  
Rapid City, SD 57701  
Telephone Number: (605)716-3652  
Email Address: jared@co-oparch.com

...

Bob Wessel  
Vice President of Building Division  
Gustafson Builders – Heavy Constructors, Inc.  
4101 Deadwood Ave.  
Rapid City, SD 57702  
605-342-3152

**PAGE 5**

Bids shall be received in sealed envelopes and opened publicly with the Owner, Architect, and Construction Manager present. Bidding shall be in compliance with applicable statutes. If Construction Manager wishes to bid on subcontracts, Construction Manager must submit to Owner a proposal for a process for Construction Manager to submit its sealed bid prior to other bidders and in compliance with state law.

PAGE 6

§ 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~~ subcontracted out 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.~~ follow instructions as noted in AIA Document A2017-2017 Section 1.7 for digital data use and transmission.

PAGE 11

Thirty thousand dollars (\$30,000.00) upon completion and delivery of the Guaranteed Maximum Price. The Guaranteed Maximum Price is to be delivered at 100% Construction Documents Phase upon determination of a bid date. The construction document delivery phase has been completed. However, with funding dates to be determined, a bid date has not been set. Therefore, a GMP cannot be delivered at this time. All parties agree, at this time, that a partial payment of Preconstruction Phase services will be paid be at 75% of the proposed preconstruction services fee for a total of twenty-two thousand five hundred dollars (\$22,500.00) with the remainder of the fee to be paid upon delivery of the GMP.

...

All costs associated with preconstruction are included in the \$30,000.00 fee.

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (~~six(6)~~ months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. If the invoice is presented to the Owner by the 1<sup>st</sup> day of a month, the invoice will be paid by the 25<sup>th</sup> day of the same month. Amounts unpaid ~~sixty ( 60 )~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

% ~~Five percent ( 5 % )~~ per annum

...

Fee to be charged on cost of Work is 2.90%. All remaining buyout savings, contingency, and extra reimbursables/allowances not used as part of the cost of Work shall be returned to the Owner.

...

No adjustment needed since fee is percentage.

**PAGE 12**

Subcontractor shall not exceed more than 8% overhead and 5% profit.

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

**PAGE 13**

**§ 7.2 Labor Costs**~~Subcontract Costs~~

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

~~§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

~~§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.~~

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

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

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

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

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

**§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.~~Miscellaneous Costs~~

§ 7.3.1 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.3.2 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.

§ 7.3.3 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.

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

§ 7.3.4.1 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.

§ 7.3.5 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.

#### § 7.4

~~Costs of Materials and Equipment Incorporated in the Completed Construction~~ **Other Costs and Emergencies**

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction. Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 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 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.

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

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

#### § 7.5

~~Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~ **Related Party Transactions**

§ 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. 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.

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

**§ 7.5.3** 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 Costs Not To Be Reimbursed**

**§ 7.6.1** ~~Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~ The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 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; and
- .9 Costs for services incurred during the Preconstruction Phase.

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

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

**§ 7.6.2** ~~Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

**§ 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.

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

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

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

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

### § 7.8 Related Party Transactions

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

Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

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

### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 — Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 — Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 — Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 — Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 — The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 — 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; and
- .9 — Costs for services incurred during the Preconstruction Phase.

## **PAGE 14**

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

## **PAGE 15**

**§ 11.1.3** Provided that an Application for Payment is received by the Architect certified to the Owner not later than the 1<sup>st</sup> day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25<sup>th</sup> day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (—) days the 25<sup>th</sup> day of the next month after the Architect receives the Application for Payment.

## **PAGE 16**

5% retainage to be withheld until Substantial Completion of Project

**PAGE 18**

5 % per annum

**PAGE 19**

Litigation in a court of competent jurisdiction

**PAGE 20**

None.

**PAGE 21**

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) Three Million Dollars and Zero Cents (\$3,000,000.00) for each occurrence and Five Million Dollars and Zero Cents (\$5,000,000) 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 not less than Three Million Dollars and Zero Cents (\$ 3,000,000.00 ) 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.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each employee, and Three Million Dollars and Zero Cents (\$ 3,000,000.00 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate. services will not be required because Contractor will not be providing any professional services.

...

Builders Risk "All Risk"

Insure the entire project for the full cost of replacement at the time of any loss

Payment and Performance Bonds

100% of the amount of the Guaranteed Maximum Price

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

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

This Agreement depends and is contingent upon the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature and other governmental funding sources for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the Owner. Termination for any of these reasons is not a default by the Owner nor does it give rise to a claim against the Owner.

Davis-Bacon Act. The Contractor shall comply with the terms of the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). The Contractor shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Contractor shall pay wages not less than once a week. This Agreement is conditioned upon the Contractor's acceptance of the wage determination. Any suspected or reported violations will be reported to the Federal awarding agency.

...  
**§ 14.5** Other provisions:

...  
.5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

.6 \_\_\_\_\_  
.5 Other Exhibits:

...  
 Supplementary and other Conditions of the Contract:

...  

<u>Exhibit C</u>	<u>Douglas High School – New HHS Budget Summary</u>		<u>1</u>
<u>Exhibit D</u>	<u>Vision – New 1400 Student Douglas High School</u>	<u>08-13-2021</u>	<u>7</u>

.7 .6 Other documents, if any, listed below:

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Kevin Case, Superintendent, Douglas School District

David Gustafson, President

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Jared Carda, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:56:17 ET on 07/11/2022 under Order No. 2114331755 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

---

*(Title)*

---

*(Dated)*



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Douglas High School  
Box Elder, South Dakota

**THE OWNER:**

*(Name, legal status and address)*

Douglas School District  
400 Patriot Drive  
Box Elder, South Dakota 57719

**THE ARCHITECT:**

*(Name, legal status and address)*

CO-OP Architecture  
601 Kansas City Street Suite 7  
Rapid City, SD 57701

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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™, 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. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

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

#### **§ 1.1.8 Initial Decision Maker**

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

### **§ 1.2 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.

§ 1.2.2 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. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

All documents transmitted for purposes of administration of the contract are to be in electronic (PDF) format and transmitted via an Internet-based submittal service that receives, logs and stores documents, provides electronic stamping and signatures, and notifies addressees via email. Besides submittals for review, information, and closeout, this procedure applies to requests for information (RFIs), progress documentation, contract modification documents (e.g. supplementary instructions, change proposals, change orders), applications for payment, field reports and meeting minutes, Contractor's correction punchlist, and any other document any participant wishes to make part of the project record. It is Contractor's responsibility to submit documents in PDF format. Users of the service need an email address, Internet access, and PDF review software that includes ability to mark up and apply electronic stamps (such as Adobe Acrobat, [www.adobe.com](http://www.adobe.com), or Bluebeam PDF Revu, [www.bluebeam.com](http://www.bluebeam.com)), unless such software capability

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is provided by the service provider. Paper document transmittals will not be reviewed; emailed PDF documents will not be reviewed.

§ 1.7.1 Approved submittal services include Submittal Exchange and Procure. If a substitution request is issued for an alternate platform, a request for substitution constitutes a representation that the submitter:

1. has investigated proposed product and determined that it meets or exceeds the quality level of the specified product.
2. Agrees to provide the same warranty for the substitution as for the specified product.
3. Agrees to coordinate setup and installation, as well as make changes that may be required for the work to be complete with no additional cost to the Owner.
4. Waives claims for additional costs or time extension that may subsequently become apparent.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. All requesting parties will be required to acknowledge and sign an Indemnification and Hold Harmless Agreement provided by the Architect / Engineer.

## ARTICLE 2 OWNER

### § 2.1 General

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

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

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

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may

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disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

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

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

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

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

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

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

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

## **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

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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.

§ 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 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.

### § 3.3 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.

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§ 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

#### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements 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 Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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

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

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

§ 3.7.3 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.

#### § 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 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

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

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

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

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

### § 3.11 Documents and Samples at the Site

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

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

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a

minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

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

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

### § 3.13 Use of Site

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.

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the intentional acts, 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.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the 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.

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

#### § 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into

similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 Contingent Assignment of Subcontracts**

- § 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

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

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

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

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

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

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

#### **§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate

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

**§ 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.

### **§ 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, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

#### § 7.4 Minor Changes in the Work

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

prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

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

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

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

### **§ 8.2 Progress and Completion**

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

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

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

### **§ 8.3 Delays and Extensions of Time**

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

**§ 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, 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

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be

held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

### **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### **§ 9.8 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.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

### **§ 9.9 Partial Occupancy or Use**

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

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

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

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

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and 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 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.

### § 10.4 Emergencies

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

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

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

Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall 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.

## § 11.2 Owner's Insurance

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

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

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

## § 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals

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and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

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

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

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

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

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

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

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and

replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

### **§ 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.

**§ 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.

### **§ 13.2 Successors and Assigns**

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

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

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### § 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.

§ 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 the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .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; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the 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; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

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

##### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

##### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 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.

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 Initial Decision

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

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a

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response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with SDCL Ch. 19-13A by a local mediator selected by the parties. If the parties are unable to select a mediator after good faith efforts to do so within 30 days of the written request for mediation, a party may proceed with binding dispute resolution. A request for mediation shall be made in writing, delivered to the other party to the Contract, and, upon selection of a mediator, also delivered to the mediator. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of the written request for mediation, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally unless otherwise agreed in the resolution of the mediated matter. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

*(Paragraphs deleted)*

# Additions and Deletions Report for AIA® Document A201® – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:17:29 ET on 06/23/2022.

## PAGE 1

Douglas High School  
Box Elder, South Dakota

...

Douglas School District  
400 Patriot Drive  
Box Elder, South Dakota 57719

...

*(Name, legal status and address)*

CO-OP Architecture  
601 Kansas City Street Suite 7  
Rapid City, SD 57701

## PAGE 11

~~The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. All documents transmitted for purposes of administration of the contract are to be in electronic (PDF) format and transmitted via an Internet-based submittal service that receives, logs and stores documents, provides electronic stamping and signatures, and notifies addressees via email. Besides submittals for review, information, and closeout, this procedure applies to requests for information (RFIs), progress documentation, contract modification documents (e.g. supplementary instructions, change proposals, change orders), applications for payment, field reports and meeting minutes, Contractor's correction punchlist, and any other document any participant wishes to make part of the project record. It is Contractor's responsibility to submit documents in PDF format. Users of the service need an email address, Internet access, and PDF review software that includes ability to mark up and apply electronic stamps (such as Adobe Acrobat, [www.adobe.com](http://www.adobe.com), or Bluebeam PDF Revu, [www.bluebeam.com](http://www.bluebeam.com)), unless such software capability is provided by the service provider. Paper document transmittals will not be reviewed; emailed PDF documents will not be reviewed.~~

§ 1.7.1 Approved submittal services include Submittal Exchange and Procure. If a substitution request is issued for an alternate platform, a request for substitution constitutes a representation that the submitter:

1. has investigated proposed product and determined that it meets or exceeds the quality level of the specified product.
2. Agrees to provide the same warranty for the substitution as for the specified product.
3. Agrees to coordinate setup and installation, as well as make changes that may be required for the work to be complete with no additional cost to the Owner.
4. Waives claims for additional costs or time extension that may subsequently become apparent.

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees. All requesting parties will be required to acknowledge and sign an Indemnification and Hold Harmless Agreement provided by the Architect / Engineer.

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the ~~negligent acts intentional acts, 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.

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by ~~the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ in accordance with SDCL Ch. 19-13A by a local mediator selected by the parties. If the parties are unable to select a mediator after good faith efforts to do so within 30 days of the written request for mediation, a party may proceed with binding dispute resolution. A request for mediation shall be made in writing, delivered to the other party to the Contract, ~~and filed with the person or entity administering the mediation.~~ and, upon selection of a mediator, also delivered to the mediator. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of ~~filing the written request for mediation,~~ unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 Either party may, ~~within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute,~~ demand in writing that the other party file for binding dispute resolution. ~~If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~ The parties shall share the mediator's fee and any filing fees equally unless otherwise agreed in the resolution of the mediated matter. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. ~~The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.~~ Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Jared Carda, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:17:29 ET on 06/23/2022 under Order No. 2114331755 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2019 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the    day of    in the year  
*(In words, indicate day, month and year.)*

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

Douglas High School  
Box Elder, South Dakota

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

Douglas School District  
400 Patriot Drive  
Box Elder, South Dakota 57719

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

### TABLE OF ARTICLES

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

#### ARTICLE B.1    GENERAL

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

#### ARTICLE B.2    OWNER’S INSURANCE

##### § B.2.1 General

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

##### § B.2.2 Liability Insurance

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

#### ADDITIONS AND DELETIONS:

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

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

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

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

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

Cause of Loss	Sub-Limit
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**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:  
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

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

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

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

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

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

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

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

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

- § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
  
- § B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
  
- § B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
  
- § B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
  
- § B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
  
- § B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
  
- § B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

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

Init.

/

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

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

Coverage

Limits

## ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

### § B.3.1 General

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

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

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § B.3.2 Construction Manager's Required Insurance Coverage

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

### § B.3.2.2 Commercial General Liability

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Three Million Dollars (\$ 3,000,000.00 ) each occurrence, Five Million Dollars (\$ 5,000,000.00 ) general aggregate, and Five Million Dollars (\$ 5,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

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

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

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

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) 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.

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

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00 ) each accident, One Million Dollars (\$ 1,000,000.00 ) each employee, and Three Million Dollars (\$ 3,000,000.00 ) policy limit.

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

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Three Millions Dollars (\$ 3,000,000.00 ) per claim and Five Million Dollars (\$ 5,000,000.00 ) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than Three Million Dollars (\$ 3,000,000.00 ) per claim and Five Million Dollars (\$ 5,000,000.00 ) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Three Million Dollars (\$ 3,000,000.00 ) per claim and Five Millions Dollars (\$ 5,000,000.00 ) in the aggregate.

*(Paragraphs deleted)*

**§ B.3.3 Construction Manager's Other Insurance Coverage**

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

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

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

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

§ B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

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

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

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

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

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

**Coverage**

**Limits**

**§ B.3.4 Performance Bond and Payment Bond**

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

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	In the amount of the Guaranteed Maximum Price
Performance Bond	In the amount of the Guaranteed Maximum Price

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

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

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

# Additions and Deletions Report for AIA<sup>®</sup> Document A133™ – 2019 Exhibit B

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:12:32 ET on 07/11/2022.

## PAGE 1

Douglas High School  
Box Elder, South Dakota

...

Douglas School District  
400 Patriot Drive  
Box Elder, South Dakota 57719

## PAGE 4

§ **B.3.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Three Million Dollars (\$ 3,000,000.00 ) each occurrence, Five Million Dollars (\$ 5,000,000.00 ) general aggregate, and Five Million Dollars (\$ 5,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

## PAGE 5

§ **B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) 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.

...

§ **B.3.2.6** Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00 ) each accident, One Million Dollars (\$ 1,000,000.00 ) each employee, and Three Million Dollars (\$ 3,000,000.00 ) policy limit.

...

§ **B.3.2.8** If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Three Millions Dollars (\$ 3,000,000.00 ) per claim and Five Million Dollars (\$ 5,000,000.00 ) in the aggregate.

§ **B.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than Three Million Dollars (\$ 3,000,000.00 ) per claim and Five Million Dollars (\$ 5,000,000.00 ) in the aggregate.

§ **B.3.2.10** Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Three Million Dollars (\$ 3,000,000.00 ) per claim and Five Millions Dollars (\$ 5,000,000.00 ) in the aggregate.

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

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

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

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

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Payment Bond

In the amount of the Guaranteed Maximum Price

Performance Bond

In the amount of the Guaranteed Maximum Price



4101 N Deadwood Ave  
Rapid City, SD 57702

<b>Preliminary CD Budgetary Pricing</b>				<b>DATE:</b>	04/05/22
<b>PROJ:</b>	Douglas HS	300,731	sf		
	Douglas School District				
		<b>ESTIMATOR:</b>	BW		
<b>LOC:</b>	Box Elder, SD	<b>PROJECT NO:</b>	4122		

*The amounts stated herein are our best estimate of probable construction costs based on current information. Because costs are influenced by market conditions, changes in project scope, and other factors beyond our control, we cannot guarantee that actual construction costs will equal this estimate.*

DIV.	DESCRIPTION	SUB-TOTAL	
01	GENERAL REQUIREMENTS	\$	1,684,848
02	EXISTING CONDITIONS	\$	577,000
03	CONCRETE	\$	14,421,814
04	MASONRY	\$	4,928,257
05	METALS	\$	13,076,306
06	WOOD, PLASTICS AND COMPOSITES	\$	1,851,000
07	THERMAL AND MOISTURE PROTECTION	\$	4,531,894
08	OPENINGS	\$	4,772,300
09	FINISHES	\$	10,954,082
10	SPECIALTIES	\$	1,172,050
11	EQUIPMENT	\$	3,752,753
12	FURNISHINGS	\$	707,800
13	SPECIAL CONSTRUCTION	\$	84,000
14	CONVEYING EQUIPMENT	\$	220,000
21	FIRE SUPPRESSION	\$	1,260,113
22	PLUMBING	\$	11,728,977
23	HEATING VENTILATING AND AIR CONDITIONING	\$	14,504,835
26	ELECTRICAL	\$	8,637,339
27	COMMUNICATIONS	\$	-
28	ELECTRONIC SAFETY AND SECURITY	\$	-
31	EARTHWORK	\$	6,939,500
32	EXTERIOR IMPROVEMENTS	\$	9,166,430
33	UTILITIES (Includes Geo Wells)	\$	5,042,750
<b>Sub-Total Estimated Construction Cost</b>		<b>\$</b>	<b>120,014,047</b>
	Fee	2.90%	\$ 3,480,407
	Building Permit	0.70%	\$ 864,461
	Payment and Performance Bonds	0.60%	\$ 746,153
	South Dakota Contractors Excise Tax	2.0410%	\$ 2,553,394
	Estimate/Design Contingency	0.0%	\$ -
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>		<b>\$</b>	<b>127,658,464</b>
		\$	424 \$/SF



# GUSTAFSON BUILDERS

A DIVISION OF

**HEAVY CONSTRUCTORS, INC**

4101 N Deadwood Ave  
Rapid City, SD 57702  
www.heavyconstructors.com

**Preliminary CD Budgetary Pricing**

**DATE:** 04/05/22

**PROJ: Douglas HS** 300,731 sf  
Douglas HS  
CD Estimate

**ESTIMATOR:** BW  
**PROJECT NO:** 4122

**LOC: Box Elder, SD**

*The amounts stated herein are our best estimate of probable construction costs based on current information. Because costs are influenced by market conditions, changes in project scope, and other factors beyond our control, we cannot guarantee that actual construction costs will equal this estimate.*

DIV.	DESCRIPTION	QUAN	UNITS	UNIT COST	X-TEND	SUB-TOTAL
<b>01</b>	<b>GENERAL REQUIREMENTS</b>					\$ 1,684,848
	Project Manager					
	Superintendent					
	Office Trailers					
	Construction Cleaning					
	Lift Equipment (Site Wide), Temp protection, ect.					
<b>02</b>	<b>EXISTING CONDITIONS</b>					\$ 577,000
	Surveys					
	Snow Removal					
	Temp Roads					
	Haul debris away, landfill fees					
<b>03</b>	<b>CONCRETE</b>					\$ 14,421,814
	Foundations					
	Slab					
	Deck Pours					
	Interior Columns/Footings					
	Rebar Package					
	<b>Pre-Cast</b>					
	Hollow Core					
	DT's					
	Wall Panels					
	Solid Grey 8"					
	12" Insulated Wall Panels					
	Grouting					
	Exterior Storage Building					
<b>04</b>	<b>MASONRY</b>					\$ 4,928,257
	CMU Walls					
	Interior Load Bearing					
<b>05</b>	<b>METALS</b>					\$ 13,076,306
	Structural Steel Package					
	Erection					
	Misc Steel (Railings / Stairs)					
	Erection					
<b>06</b>	<b>WOOD, PLASTICS AND COMPOSITES</b>					\$ 1,851,000
	Temp Protection of materials					
	Wood Blocking					
	Finish Carpentry - Supply (Casework/Cabinets)					
	Finish Carpentry - Install					
<b>07</b>	<b>THERMAL AND MOISTURE PROTECTION</b>					\$ 4,531,894

Waterproofing  
Sound batts  
Joint sealants  
Fireproofing  
Roofing Membrane  
Metal Panels  
Weather Barrier  
Wood Soffit/Siding

---

**08 OPENINGS** \$ 4,772,300

Doors Frames Hardware  
Unload / Haul  
Install  
OH Doors  
Panel Partitions  
Interior Glazing  
Exterior Storefronts  
Skylights

---

**09 FINISHES** \$ 10,954,082

Gyp Assemblies  
Misc Framing  
Tile  
Carpet & Reslient Flooring  
ACT  
Wood Flooring  
Temp Floor Protection  
Painting / Wall Coverings  
Terrazzo Flooring  
Resinous Flooring

---

**10 SPECIALTIES** \$ 1,172,050

Signage  
Metal Lockers  
Speacilties Vendor (Display Boards, Bath Accessories, Ect.)  
Speacilties Install

---

**11 EQUIPMENT** \$ 3,752,753

Food Service  
Theatre Equipment  
Athletic  
Gym Equipment  
Platform Systems  
Misc

---

**12 FURNISHINGS** \$ 707,800

Blinds  
Audieance Seating, Telescoping Bleachers  
Misc Countertops

---

**13 SPECIAL CONSTRUCTION** \$ 84,000

Rim/Kinetic Sound Board

---

**14 CONVEYING EQUIPMENT** \$ 220,000

Elevators

---

**21 FIRE SUPPRESSION** \$ 1,260,113

New fire sprinkler system

---

**22 PLUMBING** \$ 11,728,977

Plumbing

<b>23 HEATING VENTILATING AND AIR CONDITIONING</b>	<b>\$ 14,504,835</b>
HVAC (Geo Thermal Well included in Div 33)	
<b>26 ELECTRICAL</b>	<b>\$ 8,637,339</b>
Electrical complete Includes Fire Alarm	
<b>27 COMMUNICATIONS</b>	<b>\$ -</b>
included	
<b>28 ELECTRONIC SAFETY AND SECURITY</b>	<b>\$ -</b>
Owner	
<b>31 EARTHWORK</b>	<b>\$ 6,939,500</b>
Erosion Control / Seeding Grading Waste / Dirt Removals Eng Fill	
<b>32 EXTERIOR IMPROVEMENTS</b>	<b>\$ 9,166,430</b>
<b>Sports Complex</b>	
MOB Landscaping (Irrigation / Turf Areas) Trees Shrubs Fencing (6' Chainlink) Fencing (Backstops) Dugouts Gravel Surfaces Turf Field Track Surface (Mondo) 800 SF CMU Building Metal Roof	
<b>Site</b>	
Asphalt Paving (5") Basecourse (8") 4" Under Drain Pipe Curb Gutter Sidewalks Courtyard Allowances	
<b>33 UTILITIES</b>	<b>\$ 5,042,750</b>
Storm Sewer Water Misc Trenching / Connections Misc Trenching (Power, Gas, Comm) Geo Well Field	

**Sub-Total Estimated Construction Cost**

**\$ 120,014,047**

CM Fee	2.9%	\$	3,480,407
Building Permit	0.70%	\$	864,461
Payment and Performance Bonds	0.60%	\$	746,153
South Dakota Contractors Excise Tax	2.0410%	\$	2,553,394

**TOTAL ESTIMATED CONSTRUCTION COST**

**\$ 127,658,464**

\$424 \$/SF

**We See**

We see an interactive, welcoming learning environment that provides a safe haven for students to explore their unique academic vocations and achieve their full potential through connections to nature, creative innovation, purposeful curriculum, and positive collaboration.

**Guiding Principles**

**Outdoor Connections**

- Our high school will provide students and staff with direct connections to the outdoors through open green spaces for collaboration and learning in nature.

**Innovative & Creative**

- Our high school will be an innovative hub where learning is limitless, creativity is inspired, and opportunities are explored as students achieve their full potential.

**Purposeful Curriculum**

- Our high school will encompass a variety of learning environments that reflect the unique needs and vocations of our student body while championing a forward thinking, meaningful curriculum.

**Welcoming & Aesthetically**

- Pleasing Environment Our high school will be a safe, inviting, and vibrant learning environment that fosters flexibility and collaboration among our students, staff, families, and visitors.



SPACE	# of Spaces	Net SF ea. Space	Total Net SF
<b>small spaces</b>			
<b>ADMINISTRATION</b>		subtotal	3640
1.01 Public Reception /Secretarial	1	280	280
1.02 Principal's Office	1	180	180
1.03 Assistant Principal's Office	3	160	480
1.04 Support Office	2	160	320
1.05 Student Reception	1	80	80
1.06 Conference			
.01 Small	1	200	200
.02 Large	1	500	500
1.07 Work Room	1	400	400
1.08 Storage / Vault	1	150	150
1.09 In School Suspension	1	600	600
1.10 Staff Toilets	2	75	150
1.11 Volunteers Work Room		0	0
1.12 Receptionist	3	100	300
Notes:			
<b>FACILITY SUPPORT</b>		subtotal	2530
2.01 Receiving	1	150	150
2.02 Warehouse / Storage	2	400	800
2.03 Workshop	1	200	200
2.04 Grounds / Equipment Storage	1	800	800
2.05 Custodial Office	1	80	80
2.06 Custodial Closets	10	50	500
2.07		0	0
Notes:			
<b>FACULTY / STAFF SUPPORT</b>		subtotal	3275
3.01 Staff Lounge / Break Room	1	625	625
3.02 Teacher Planning Center	3	400	1200
3.03 Workroom	3	150	450
3.04 Collaboration Room		0	0
3.05 Lactation Room	1	100	100
3.06 Respite Room		0	0
3.07 Staff Toilets	6	75	450
3.08 Storage	3	150	450
3.09		0	0
Notes:			
<b>SPECIAL NEEDS</b>		subtotal	2625
4.01 Behavior Room		0	0
4.02 Special Needs Classroom	1	1085	1085
4.03 Toilet	1	100	100
4.04 De-escalation Room	1	80	80
4.04 Sensory	1	250	250
4.06 Specialist	4	140	560
4.07 Testing / Small Group	2	125	250
4.08 Storage	2	150	300
4.09		0	0
Notes:			

SPACE	# of Spaces	Net SF ea. Space	Total Net SF	
<b>STUDENT SUPPORT</b>		subtotal	3260	
5.01 .01 Career Center	1	1390	1390	
.02 Counselor's Office	6	120	720	Added an additional office.
.03 Conference / Collaboration	1	200	200	
5.02 .01 Tech Assessment	1	150	150	
.02 Repair & Refurbishment	1	400	400	
.03 Tech Office	1	100	100	
5.03 .01 Nurse	1	200	200	
.02 Nurse's Office		0	0	
.03 Exam		0	0	
.04 Nurse's Toilet	1	100	100	
5.04 Storage		0	0	
5.05		0	0	

Notes:

## medium spaces

CLASSROOM LAB	# of Spaces	Net SF ea. Space	Total Net SF	
<b>CLASSROOM LAB</b>		subtotal	37489	
6.01 Computer Lab	2	1375	2750	Includes Photography
6.02 Family and Consumer Science				
.01 FCS Lab	1	1375	1375	
.02 Foods Lab	1	1705	1705	
.03 Specialty Storage	2	150	300	
6.03 Performing Arts				
.01 Band	1	2080	2080	
.a Instrument Storage	1	396	396	
.b Percussion Storage Room	1	150	150	
.c Uniform Storage	1	196	196	
.02 Choral / Vocal Music	1	1400	1400	
.a Robe Storage	1	100	100	
.03 Orchestra Room	1	2040	2040	PROGRAM CHANGE
.a Instrument / Storage	1	455	455	PROGRAM CHANGE
.04 Practice Rooms				
.a Small	4	100	400	
.b Medium		0	0	
.05 Ensemble Rooms	1	390	390	
.06 Collaboration - TPC	2	120	240	
.07 Music Library	1	150	150	
6.04 Specialized				
.01 Specialized Learning Lab	3			
.01.a Robotics	1	1680	1680	
.01.b Welding	1	2460	2460	
.01.c Woods	1	2800	2800	
.01.d Construction	1	1500	1500	
.02 Classroom Studio	1	840	840	
.03 Materials Storage	4	200	800	
.04 Project Storage	4	200	800	
.05 Tool Storage	4	200	800	
.06 Locker / Changing Room	2	116	232	
.07 Collaboration Space	1	200	200	
6.05 Visual Arts				

SPACE	# of Spaces	Net SF ea. Space	Total Net SF	
.01 Visual Arts Studio	4	1375	5500	MS calls for 3.3 Rooms @ 1250
.02 Collaboration - TPC	1	150	150	
.03 Storage / Kiln	2	500	1000	
6.06 ROTC	3			
.01 Classroom Studio	1	900	900	
.02 Drill	1	2500	2500	
.03 Collaboration - TPC	1	200	200	
.04 Storage	1	500	500	
6.07 Gallery	1	500	500	
6.08		0	0	

Notes:

MEDIA CENTER / LIBRARY	# of Spaces	Net SF ea. Space	Total Net SF	
<b>MEDIA CENTER / LIBRARY</b>		subtotal	3895	
7.01 Entry / Circulation	1	200	200	
7.02 Research	1	50	50	
7.03 Print Material	1	1560	1560	
7.04 Collaboration	1	1125	1125	
7.05 Small Group Rooms	4	120	480	
7.06 Work Room	1	200	200	
7.07 Equipment Storage	1	80	80	
7.07 Audio / Video Studio	1	200	200	
7.09		0	0	

Notes:

## large spaces

AUDITORIUM	# of Spaces	Net SF ea. Space	Total Net SF	
<b>AUDITORIUM</b>		subtotal	16110	
8.01 Lobby		0	0	
8.02 Black Box / Forum Seating		0	0	
8.03 Seating Area - Main House	1	8800	8800	
8.04 Stage	1	3600	3600	
8.05 Orchestra Pit		0	0	
8.06 Lighting Control	1	200	200	
8.07 Sound Control	1	160	160	
8.08 Drama Studio		0	0	
8.09 Dressing Room / Toilet	2	375	750	
8.10 Makeup	1	600	600	
8.11 Green Room		0	0	
8.12 Scene / Stage Shop	1	1000	1000	
8.13 Storage	2	500	1000	
8.14		0	0	

Notes:

FOOD SERVICE	# of Spaces	Net SF ea. Space	Total Net SF	
<b>FOOD SERVICE</b>		subtotal	18269	
9.01 Student Dining / Cafeteria	1	11300	11300	
9.02 Servery	1	2700	2700	
9.03 Kitchen / Food Preparation	1	1688	1688	
9.04 Walk-in Coolers	1	338	338	
9.05 Walk-in Freezers	1	270	270	
9.06 Dishwashing	1	473	473	
9.07 Dry Storage	1	675	675	
9.08 Office	1	80	80	
9.09 Employee Break Room	1	0	0	

SPACE	# of Spaces	Net SF ea. Space	Total Net SF
9.10 Employee Locker	1	50	50
9.11 Staff Toilets	1	75	75
9.12 Utility	1	40	40
9.13 Cart Storage	1	40	40
9.14 Cart Wash	1	40	40
9.15 Table Storage	1	500	500
9.16		0	0

Notes:

LEARNING SUITE	subtotal		56655
10.01 Small Classroom Studio	1.666667	540	900
10.02 Medium Classroom Studio	3.666667	900	3300
10.03 Large Classroom Studio	7.666667	1080	8280
10.04 Science			
.01 Science Lab	2.6	1375	3575
.02 Prep / Storage	1.3	250	325
10.05 Maker - Flex Lab	0.6	1375	825
10.06 Small Group Collaboration	2	125	250
10.07 Learning Commons	1	1000	1000
10.08 Social Commons		0	0
10.09 Student Lockers	1	280	280
10.10 Storage	1	150	150
10.11		0	0
		subtotal	18885
	3	18885	56655

Notes:

PHYSICAL EDUCATION/ATHLETICS	subtotal		49794
11.01 Lobby		0	0
11.02 Concessions	1	500	500
11.03 Gymnasium - Competition	1	16000	16000
.01 Elevated Track	1	6085	6085
.02 PE Storage	1	500	500
.03 Athletic Storage	3	500	1500
11.04 Gymnasium - Auxiliary	1	8000	8000
.01 Elevated Track	1	0	0
.02 Storage	1	500	500
11.05 Weight Room	1	2175	2175
.01 Weights Storage	1	80	80
11.06 Fitness / Aerobics	1	1000	1000
.01 Exercise Storage	1	80	80
11.07 Wrestling Room	1	4032	4032
.01 Wrestling Storage	1	80	80
11.08 Team Meeting Room		0	0
11.09 Training Room	1	234	234
.01 Hydrotherapy Room	1	80	80
.02 Rehabilitation Room		0	0
.03 Training Office	1	120	120
.04 Training Storage	1	150	150
11.10 Laundry	1	135	135
11.11 Multi-Purpose Locker Room	2	1253	2505
11.12 Athletic Locker Room	4	1040	4160

SPACE	# of Spaces	Net SF ea. Space	Total Net SF
11.13 Official's Locker Room	1	378	378
11.14 Staff Locker Room	2	130	260
11.15 Phys. Ed. Office	2	120	240
11.16 Athletic Office	2	500	1000
11.17		0	0

Notes:

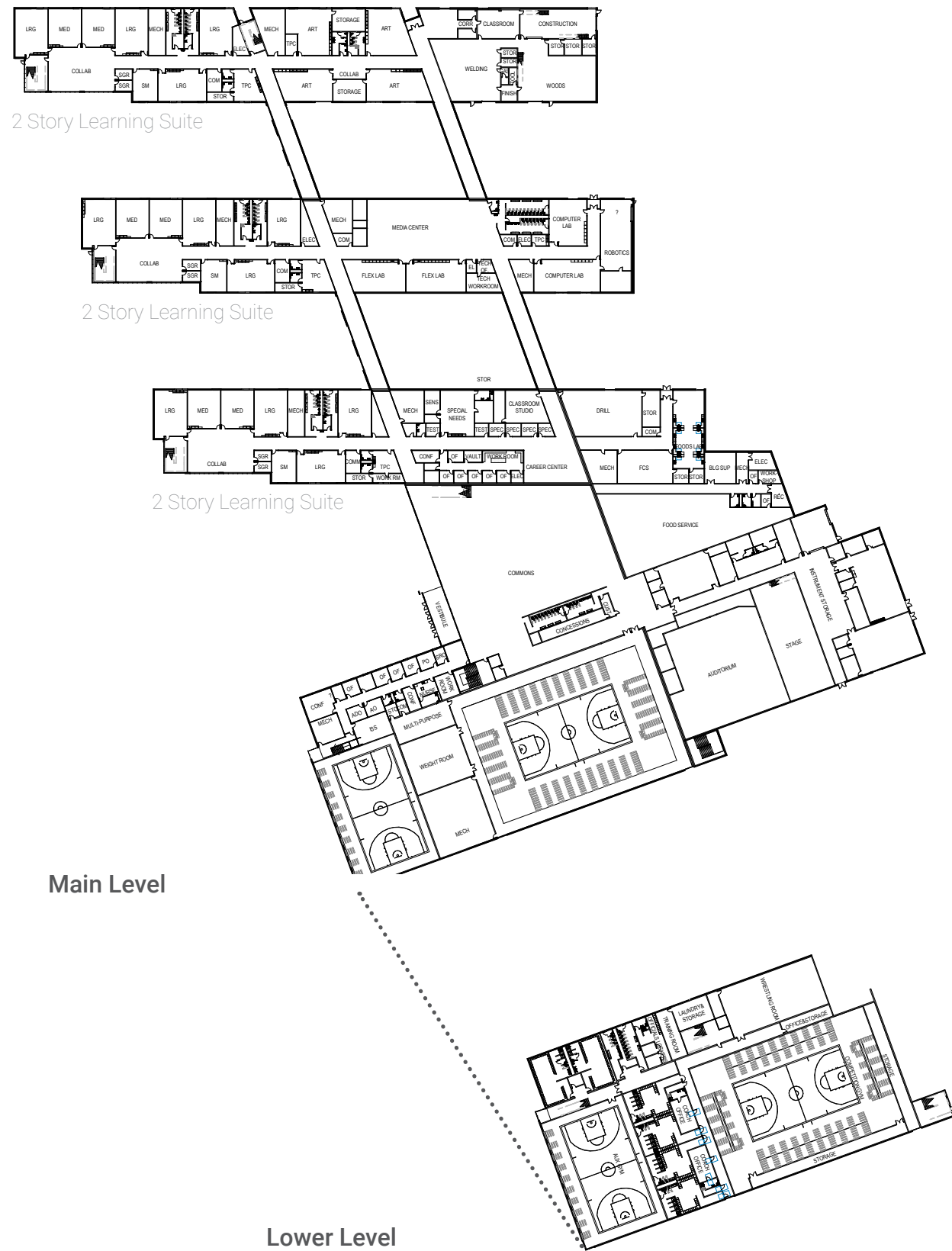
TOTAL NET ASSIGNABLE AREA	197542	
Circulation - Interior		
Electrical / Special Systems		
Mechanical		
Restrooms		
Structure		

TOTAL BUILDING AREA	303,000	
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Preliminary SD Budgetary Pricing			DATE:	08/13/21
PROJ:	Douglas HS	303,000	sf	
	Douglas School District			
		ESTIMATOR:	BW	
LOC:	Box Elder, SD	PROJECT NO:	4122	
<i>The amounts stated herein are our best estimate of probable construction costs based on current information. Because costs are influenced by market conditions, changes in project scope, and other factors beyond our control, we cannot guarantee that actual construction costs will equal this estimate.</i>				
DIV.	DESCRIPTION	SUB-TOTAL		
01	GENERAL REQUIREMENTS	\$	1,555,000.00	
02	EXISTING CONDITIONS	\$	476,000.00	
03	CONCRETE	\$	11,666,500.00	
04	MASONRY	\$	6,500,000.00	
05	METALS	\$	9,455,000.00	
06	WOOD, PLASTICS AND COMPOSITES	\$	2,060,000.00	
07	THERMAL AND MOISTURE PROTECTION	\$	4,230,000.00	
08	OPENINGS	\$	3,078,500.00	
09	FINISHES	\$	7,155,000.00	
10	SPECIALTIES	\$	1,150,000.00	
11	EQUIPMENT	\$	2,915,000.00	
12	FURNISHINGS	\$	265,000.00	
13	SPECIAL CONSTRUCTION	\$	-	
14	CONVEYING EQUIPMENT	\$	230,000.00	
21	FIRE SUPPRESSION	\$	1,023,000.00	
22	PLUMBING	\$	7,750,000.00	
23	HEATING VENTILATING AND AIR CONDITIONING	\$	11,935,000.00	
26	ELECTRICAL	\$	6,820,000.00	
27	COMMUNICATIONS	\$	-	
28	ELECTRONIC SAFETY AND SECURITY	\$	-	
31	EARTHWORK	\$	7,420,000.00	
32	EXTERIOR IMPROVEMENTS	\$	8,661,250.00	
33	UTILITIES (Includes Geo & Irrigation Wells)	\$	4,732,500.00	
Sub-Total Estimated Construction Cost		\$	99,077,750.00	
		\$	326.99	/sft
	Fee	2.90%	\$	2,873,254.75
	Building Permit	0.7% (May not be required)	\$	713,659.32
	Payment and Performance Bonds	0.60%	\$	615,989.95
	South Dakota Contractors Excise Tax	2.0410%	\$	2,107,964.82
	Estimate/Design Contingency	0.0% Included in overall	\$	-
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>			<b>\$</b>	<b>105,388,945.83</b>

Additions and New Construction Cost	315,000 SF		\$117,721,945
On-Site Development		\$0	\$0
Off-Site Development		\$2,100,000	\$2,100,000
New Douglas High School	303,000 SF	\$348 SF	\$105,388,945
Equipment			
CTE Equipment	12,000 SF	\$ 70.00	\$840,000
Furniture, Furnishings & Equipment (Movable)		\$ 11.00	\$3,333,000
Technology and Technology Equipment		\$ 20.00	\$6,060,000
Geothermal Well Field			LS \$0
Support Buildings (Storage, Concessions, RR, Press Boxes, etc...)	SF	\$0	\$0
Storm Shelter Construction Premium		# P	\$0
Construction Management Fees		\$ -	LS \$0
<b>COST OF THE WORK</b>			<b>\$117,721,945</b>
Architect / Engineering Fees			\$6,489,987
Renovation and Remodeling Cost			\$0
Additions and New Construction Cost		6.00%	\$6,323,337
FFE Design			\$166,650
Specialty Consultants (Food Service, Acoustical, Theatrical, Etc.)		\$0 LS	\$0
Multiple Bid Packages Additional Services			\$0
Enhanced Construction Phase Services		0.0%	\$0
BOLD Services		\$40,000	\$40,000
Site Acquisition & Development Cost			\$19,000
Site Acquisition		\$0 LS	\$0
Platting Cost		\$0 LS	\$0
Traffic Impact Study		\$19,000 LS	\$19,000
Off-Site Street and Utilities Development		\$0 SF	\$0
General and Jurisdictional Expenses			\$1,806,729
Printing (Allowance)		0.2%	\$235,444
Reimbursable Expenses (Allowance)		0.1%	\$117,722
Topographic Survey (3rd Party)			\$24,900
Pre-Construction Geo-Technical Soils Testing (3rd Party)		0.1%	\$117,722
Geothermal Test Well (Ground Source Conductivity Test)			LS \$11,000
Special Inspections (3rd Party)		0.5%	\$588,610
Construction Soils Testing (3rd Party)		0.3%	\$353,166
NPDES Permit Preparation and Coordination			\$0
Storm Water Pollution Prevention Plan (SWPPP)		\$5,000 LS	\$5,000
Erosion Control Monitoring (SWPPP) (3rd Party)		0.15%	\$176,583
Watershed Fee			
Wetland Delineation			
Builders Risk Insurance		0.15%	\$176,583
Contractor Proposal Evaluations (Allowance)			LS \$0
Utility Company Fees			
Sewer			LS \$0
City Interceptor Sewer Fee			\$0
Water Pioneer Main			LS \$0
Internal Water Main			LS \$0
Water Meter			LS \$0
Gas			LS \$0
Electric			LS \$0
Estimated Electric Utility Company Rebate			LS \$0
Building Permit Fee			\$0
State Fire Marshall			LS \$0
Arterial Street Improvement Program Fee			\$0
LEED Registration Fee			LS \$0
LEED Documentation Fee		0.0%	\$0
Building Commissioning Fee		0.0%	\$0
Mechanical Life Cycle Cost Analysis			LS \$0
<b>PROJECT EXPENDITURE SUBTOTAL</b>			<b>\$126,057,661</b>
Design and Construction Contingency		10.00%	\$11,772,195
<b>PROJECT BUDGET including contingency</b>			<b>\$137,829,855</b>
Project Escalation Factor		0.00%	\$0
<b>TOTAL PROJECT ESCALATED BUDGET</b>			<b>\$137,829,855</b>
Fiscal Consultant Fees		0.0%	\$0
<b>TOTAL ESTIMATED PROJECT BUDGET</b>			<b>\$137,829,855</b>





Learning Suites



Northeast Corner



SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>AA</b>
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**School District Legal Status**

The United States Constitution leaves to the individual states responsibility for public education.

In South Dakota, the legislature is charged by the Constitution "to establish and maintain a general and uniform system of public schools" which is open to all children and free from sectarian control.

The State Board of Education is responsible for the adoption of all policies for the government of the Division of Elementary and Secondary Education, and for the adoption and implementation of regulations for supervising the elementary and secondary schools.

School Districts exist for the purpose of operating a school or schools to provide the people of each local community adequate opportunity to avail themselves of a free public elementary and secondary education program.

This School District constitutes a school corporation under the name of Douglas School District, No. 51-1 of Pennington and Meade Counties, South Dakota.

**REFERENCES**

**Policy Reference:**  
 BB - School Board Legal Status

**State References**

SD Constitution Article 22	<a href="#"><u>Compact with the United States</u></a>
SD Constitution Article 26 §18	<a href="#"><u>Freedom of religion</u></a>
SD Constitution Article 8 §1	<a href="#"><u>Uniform system of free public schools</u></a>
SDCL 13-5-1	<a href="#"><u>School districts defined</u></a>
SDCL 13-5-14	<a href="#"><u>School districts overlapping county boundaries</u></a>
SDCL 13-5-15	<a href="#"><u>School districts as corporations</u></a>
SDCL 13-5-16	<a href="#"><u>Naming and numbering of school districts</u></a>
SDCL 13-5-17	<a href="#"><u>Recording of school dist. names, #'s &amp; boundaries</u></a>
SDCL 13-5-17.1	<a href="#"><u>Change of name of school district</u></a>
SDCL 13-5-2	<a href="#"><u>Types of school districts abolished</u></a>
SDCL 13-5-29	<a href="#"><u>Vested contract rights not impaired</u></a>
SDCL 13-6	<a href="#"><u>School district reorganization</u></a>

**Federal References**

US CONST 10th Amd.	<a href="#"><u>Powers of the states and people</u></a>
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**Adoption History**

First Reading	8/25/2014		
Approved	9/8/2014		

SECTION	A	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>ABA</b>
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**Parental / Community Involvement in Decision Making**

The Board of Education endorses the concept that community participation in the school is essential if the District and the community are to maintain mutual confidence and respect and work together to provide a meaningful educational program for all students.

The Board encourages each administrative unit to develop appropriate activities that:

1. Ensure that the school climate is open, helpful, friendly and welcome to all patrons.
2. Involve parents as partners on advisory functions such as: curriculum, instructional materials, school improvement, accountability, discipline, and parent/community involvement.
3. Provide two-way communication with all patrons respecting the diversity and differing needs of families.
4. Develop strategies and programmatic structures for patrons to participate actively in the educational system.
5. Utilize schools to inform students and families about community resources that provide educational enrichment and support.
6. Work closely with community organizations (including Ellsworth AFB), which, by their policies and activities, can provide support and/or assistance for active parental and community involvement.
7. Provide professional development opportunities for teachers and staff to enhance their effectiveness with parents.
8. Assess the effectiveness of parental involvement efforts.

The Board also encourages parents and the community to initiate communications concerning educational interests and ideas utilizing district policies, procedures, and activities.

**REFERENCES**

- Policy Reference:**  
 BCF - Advisory Committees to the Board  
 KMA - Relations with Parent Organizations

**Adoption History**

First Reading	11/26/1991		
Approved	01/14/1992		
First Reading-Revised	11/6/2006		
Approve - Revision	11/27/2006		
First Reading	8/25/2014		
Approved	9/8/2014		

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>ABAB</b>
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**PARENT INVOLVEMENT**

The Board of Education recognizes that a child's education is a responsibility shared by the school and family during the entire period the child spends in school. To support the goals of the school district to educate all students effectively, the schools and parents must work as knowledgeable partners.

Although parents are diverse in culture, language, and needs, they share the school's commitment to the educational success of their children. School districts and schools, in collaboration with the parents, shall establish and develop programs and practices that enhance parent involvement and reflect the specific needs of students and families.

To this end, the Board will support the development, implementation and regular evaluation of a parent involvement program, which will involve parents at all grade levels in a variety of roles. The parent involvement program will be comprehensive and coordinated in nature and will include, but not be limited to, the following:

- Support to parents as leaders and decision makers in advisory roles.
- Promotion of clear two-way communication between the school and the family as to school programs and children's progress.
- Assistance to parents and/or guardians to develop parenting skills to foster positive relationships at home that support children's efforts and provide techniques designed to assist their children with learning at home.
- Involvement of parents, with appropriate training, in instructional and support roles at the school.
- Provision of access to and coordination of community and support services for children and families.

These forms of involvement are not mutually exclusive and require a coordinated school wide effort.

**REFERENCES**

**State Reference:**  
 SD Constitution Article 22  
**Federal Reference:**  
 USC Title

**Adoption History**

First Reading	<i>8/25/2014</i>		
Approved	9/08/2014		

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>ABAC</b>
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**RELATIONS WITH PARENTS**

The Board believes that the education of children is a joint responsibility, one it shares with the parents of the school community. To ensure that the best interests of the child are served in this process, a strong program of communication between home and school must be maintained.

The Board feels that it is the parents who have the ultimate responsibility for their children's in- school behavior, including the behavior of pupils who have reached the legal age of majority, but are still for all practical purposes, under parental authority. During school hours, the Board through its designated administrators acts in loco parentis or in place of the parents.

**SCHOOL DISTRICT RESPONSIBILITY**

The Board directs that the following activities be implemented to encourage parent-school cooperation:

1. Parent-teacher conferences to permit two-way communication between home and school.
2. Open houses, **within** district schools, to provide parents with the opportunity to see the school facilities, meet the faculty, and sample the program on a first-hand basis.
3. Meetings of parents and staff members to explain and discuss matters of general interest with regard to child-school, child-home, or child-home-school relationships.
4. Meetings of staff members and groups of parents of those students having special abilities, disabilities, needs, or problems.
5. Special events of a cultural, ethnic, or topical nature, which are initiated by parent groups, involve the cooperative effort of students and parents, and are of general interest to the schools or community.

**PARENT/GUARDIAN RESPONSIBILITY**

For the benefit of children, the Board believes that parents have a responsibility to encourage their career in school by:

1. Supporting the school in requiring that children observe all school rules and regulations, and by accepting their own responsibility for children's willful in-school behavior;
2. Sending children to school with proper attention to their health, personal cleanliness and dress;
3. Maintaining an active interest in the student's daily work and making it possible for the student to complete assigned homework through providing a quiet place and suitable conditions for study;
4. Reading all communications from the school, and signing and returning them promptly when required;
5. Cooperating with the school in attending conferences set up for the exchange of information on the child's progress in school;

6. Participating in in-school activities and special functions.

**REFERENCES**

**State Reference:**

SD Constitution Article 22 Compact with the United States

**Federal Reference:**

USC Title

**Adoption History**

First Reading	Date		
Approved			

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>AC</b>
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**NONDISCRIMINATION IN FEDERAL PROGRAMS**

The Douglas School District will not violate any of the provisions of applicable federal programs, statutes or regulations, including but not limited to Title IX, ESEA/Title 1, Rehabilitation Act Section 504, Title II (Americans with Disabilities Act), ESSA, and McKinney-Vento Act (homeless children). The District will not discriminate in any of its policies and programs on the basis of age, race, color, creed, national origin, ancestry, religion, sex, or disability.

The District will provide the following:

1. an adequate, reliable, and impartial investigation of complaints, including the opportunity for the complainant and alleged perpetrator to present witnesses and provide evidence;
2. evaluation of all relevant information and documentation relating to a complaint of discrimination;
3. specific, reasonably prompt time frames at each stage of the grievance process;
4. written notice to all parties within a specified timeframe of the outcome or disposition of the grievance at each stage of the process;
5. an opportunity to appeal the findings or remedy, or both;
6. an assurance that the District will take steps to prevent recurrence of any discrimination and correct discriminatory effects on others; and
7. language in the policies and grievance procedures indicating that any attempts to informally or voluntarily resolve the complaint or grievance should not delay the commencement of the District’s investigation.

In compliance with applicable federal laws and regulations, the Board has appointed the Superintendent as the District’s Compliance Officer to coordinate program compliance with federal programs. The Superintendent can be reached at:

Douglas School District 51-1  
400 Patriot Drive  
Box Elder, SD 57719  
605-923-0000

Concerns regarding Title IX of the Education Amendments of 1972 should be directed to **Executive Director of Operational Support Services** , Douglas School District #51-1, 400 Patriot Drive, Box Elder, SD 57719 (605) 923-0000.

Inquiries concerning the applications of Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitation Act of 1973, as amended, may be referred to **Executive Director of Elementary Academics** , Douglas School District #51-1, 400 Patriot Drive, Box Elder, SD 57719 (605) 923-0000.

A complaint may also be filed with the United States Office for Civil Rights, U. S. Department of Education, 1010 Walnut Street, Suite 320, Kansas City, Missouri 64106. Phone: (816) 268-0550; TDD: (877) 521-2172; Fax: (816) 268-0599. E-mail [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

## REFERENCES

**State:**

SD Constitution Article 6

SDCL 13-37

SDCL 20-13

**Federal:**

Public Law 94-142

USC Title 20 1681-1688

USC Title 29 Chapter 14

USC Title 29 Chapter 16

USC Title 42 11431

USC Title 42 2000

USC Title 42 6101-6103

**Cross References:**

ACB

FEFA

GBA

JB

## Adoption History

First Reading	3/27/90
Approved	4/9/90
Revised	9/8/90
Revised	6/5/98
First Reading – Revisions	6/14/99
Approved Revision	6/28/99
First Reading – Revisions	2/12/07
Approved	2/26/07
First Reading – Revisions	5/12/08
Approved	5/27/08
First Reading – Revisions	6/28/12
Approved	7/9/12
First Reading – Revisions	1/13/14
Approved	1/27/14
First Reading	8/25/14
Approved	9/8/14
First Reading – Revision	10/1/15
Approved	10/13/15
First Reading	6/27/19
Approved	7/22/19

SECTION	A	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>AC-R</b>
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**NONDISCRIMINATION IN FEDERAL PROGRAMS**  
**Complaint Procedure**

The Board has adopted a specific procedure to ensure that parental/student/public complaints related to the provisions of applicable federal programs, statutes or regulations, including claims of retaliation. The Board will not discriminate, in any of its policies and programs, on the basis of age, race, color, creed, national origin, ancestry, religion, sex or disability.

The purpose of this complaint procedure is to outline a procedure for addressing parental/student/public complaints about federal program compliance and/or discrimination. *Complaints against school employees and complaints related to sexual harassment, bullying, and instructional and library materials are addressed through other School District policies and not through this policy.*

For the purposes of this policy, a “complaint” is a perceived or alleged violation of federal programs, statutes or regulations (e.g., Title IX, ESEA/Title I, Rehabilitation Act Section 504, Title II (Americans with Disabilities Act), ESSA, McKinney-Vento Act (homeless children), etc.) and/or discrimination in a policy and/or program on the basis of age, race, color, creed, national origin, ancestry, religion, sex or disability.

To protect the confidentiality of all concerned, it is imperative that any school employee in receipt of a complaint treat the complaint as confidential and that the complaint not be reproduced in any form, nor disclosed or discussed with any person other than those identified as proper recipients of the complaint (i.e., the principal, superintendent, school board).

When a federal program compliance complaint or discrimination/harassment complaint based on race, color, national origin, age or sex (excluding sexual harassment complaints) is brought directly to an individual board member or the entire Board, the board member or entire Board may listen to the person’s complaint but shall take no action unless there has been compliance with this Policy. The person bringing the complaint will be directed to the procedure as set forth below. The following procedure is designed to ensure the proper balance in protecting the rights of the person(s) bringing the complaint and the rights of the employee against whom the complaint is made. It is only when the person having the complaint and the employee involved cannot resolve the problem, and the complaint cannot be resolved at the administrative level, will the Board and board members become involved.

Should it be determined that discrimination or harassment occurred based on race, color, national origin, age or sex, the District will take steps to prevent recurrence of any discrimination or harassment and to correct its discriminatory effects on others, if appropriate.

**STEP 1: Initial Complaint**

- A. The person having the complaint related to federal program compliance or discrimination/harassment complaint based on race, color, national origin, age or sex (excluding sexual harassment complaints), the person must initiate the complaint procedure in one of the following ways:
- meet and discuss the concern with the Employee involved; OR
  - meet and discuss the concern with the Employee's Principal.
1. If the Complainant met with the Employee and the complaint was not resolved, the Complainant must meet and discuss the complaint with the Employee's Principal within ten (10) calendar days of the meeting with the Employee. The Principal shall complete a Complaint Form, Exhibit AC-E(1). The Complainant shall sign and date the Complaint Form verifying the accuracy of its content.
2. If the Complainant initiates the complaint by meeting with the Principal, the Principal shall complete a Complaint Form, Exhibit AC-E(1). The Complainant shall sign and date the Complaint Form verifying the accuracy of its contents.
- B. Upon the Complaint Form being signed and dated by the Complainant, the Principal shall give a copy of the complaint to the District's Compliance Officer (Superintendent). The Principal shall also give a copy of the complaint to the Employee and schedule an informal meeting with only the Complainant, Employee and Principal present. At the meeting, the Principal shall attempt to facilitate discussion between the Complainant and Employee by seeking clarification of the issue(s) and seeking a resolution to the complaint. However, attempts to informally or voluntarily resolve the complaint should not delay the commencement of the District's investigation. Should a resolution be obtained, the resolution shall be noted on the Complaint Form. Should a resolution not be obtained, the Complainant and/or the Employee may request a decision by the Principal on the merits of the complaint by making the request on the Complaint Form.
- C. If the Principal is asked to make a decision on the merits of the complaint, the Principal has the authority to investigate the complaint beyond the information received from the Complainant and Employee during the meeting with the Complainant, Employee and Principal. During the Principal's investigation, the Complainant and alleged perpetrator shall both have the opportunity, at separate times, to present witnesses and provide evidence to the Principal. The Principal shall evaluate all relevant information and documentation related to the complaint of discrimination or harassment and shall render a decision in writing within fourteen (14) calendar days of the request for a decision on the merits of the complaint. The time frame for rendering a decision by the Principal may be extended by the Principal for good cause and upon written notification to the Complainant and Employee. The notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant and the Employee shall receive written notification of the Principal's determination/resolution.
- D. The Principal's decision may be appealed by the Complainant or Employee to the Superintendent within (10) ten calendar days of receipt of the Principal's written decision pursuant to Step 2. If the Principal does not render a written decision within the required time frame (14 days unless extended) the Complainant or Employee may appeal to the Superintendent pursuant to Step 2. Should the complaint be against a Principal, the Superintendent shall address the complaint through the procedure set forth in Step 1. An appeal by the Complainant pursuant to Step 1D may be filed with the School Board pursuant to Step 3. Should the complaint be against the Superintendent (or the Principal who also is the Superintendent) the Complaint Form, Exhibit AC-E(1), shall be given to the Business Manager. The Business Manager shall give the Complaint Form to the School Board President or Chairperson. At the next School Board meeting, the School Board will designate a person

who is not an Employee of the District to address the complaint through the procedure set forth in Step 1. An appeal by the Complainant pursuant to Step 1D may be filed with the School Board pursuant to Step 3.

## **STEP 2: Appeal to the Superintendent**

The following procedure shall be used to address an appeal of the Principal's decision made in Step 1, or if the Principal failed to render a decision in the required time frame:

- A. The appeal shall be in writing using Exhibit AC-E(2). The appealing party must attach the complaint and the Principal's written decision, if a decision was rendered.
- B. Upon receipt of an appeal, the Superintendent will provide a copy of the appeal to the other party. Within five (5) calendar days, the other party may submit a written response to the appeal. The Superintendent shall provide a copy of the response to the appealing party.
- C. In the Superintendent's sole discretion, the Superintendent may (a) meet and discuss the matter with the Complainant and Employee, (b) meet and discuss the matter with the Complainant, Employee and Principal, or (c) meet and discuss the matter with the Principal.
- D. Within fourteen (14) calendar days from the date the appeal was filed with the Superintendent, the Superintendent shall render a decision in writing. The time frame for rendering a decision by the Superintendent may be extended by the Superintendent for good cause and upon written notification to the Complainant and Employee; the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered. The Complainant, Employee and Principal shall receive copies of the decision. The Superintendent may uphold, reverse or modify the Principal's decision. The Superintendent may also refer the matter back to the Principal for further investigation. The Principal may uphold, modify or reverse his or her initial decision. After a matter has been referred back to the Principal, and the Principal rendered a second decision, that decision may also be appealed to the Superintendent.
- E. The Superintendent's decision may be appealed by the Complainant to the School Board within (10) ten calendar days of receipt of the Superintendent's written decision pursuant to Step 3. If the Superintendent does not render a written decision within the required time frame (14 calendar days unless extended) the Complainant may appeal to the School Board pursuant to Step 3.
- F. If the Employee believes the Superintendent's decision constitutes a violation, misinterpretation or inequitable application of School Board policy or collective bargaining agreement applicable to the Employee, the Employee may file a grievance pursuant to the applicable grievance policy. A grievance filed pursuant to this provision shall be initiated at the Superintendent level.

## **STEP 3: Complainant's Appeal to the School Board**

The following procedure shall be used to address an appeal of the Superintendent's decision made in Step 2, or if the Superintendent failed to render a decision in the required time frame:

- A. An appeal to the School Board shall be in writing using Exhibit AC-E(3). The Complainant must attach the complaint, the Principal's written decision if a decision was rendered, the appeal to the Superintendent, the response to the appeal if any, and the Superintendent's decision if one was

rendered.

- B. The appeal must be filed with the President/Chairperson of the School Board or Business Manager within ten (10) calendar days of Complainant's receipt of the Superintendent's written decision, or within ten (10) days of the deadline for the Superintendent's written decision, whichever comes first.
- C. Upon receipt by the Board President/Chairperson of an appeal by the Complainant, a copy of the appeal shall be given to the Employee involved.
- D. Upon receipt of an appeal to the School Board, the School Board shall schedule a date, time and location for the appeal hearing.
- E. The following procedure shall be applicable at the appeal hearing before the School Board:
  - 1. The School Board shall appoint a school board member or a person who is not an employee of the school district as the Hearing Officer.
  - 2. Within thirty (30) calendar days of an appeal being filed with the School Board, the School Board shall conduct a hearing in executive session.
  - 3. The Complainant, Employee and Superintendent each have the right to be represented at the hearing.
  - 4. The School Board shall make a verbatim record of the hearing by means of an electronic device or a court reporter. This record and any exhibits must be sealed and must remain with the Hearing Officer until the appeal process has been completed.
  - 5. The issue on appeal is whether the Superintendent's decision should be upheld, reversed or modified by the School Board; in the absence of a decision by the Superintendent, the School Board will make a decision on the merits of the complaint.
  - 6. All parties shall be given the opportunity to make an opening statement, with the Complainant being given the first opportunity, followed by the Employee and then the Superintendent.
  - 7. The Complainant shall present his/her case first, and the Employee shall then present his/her case. Both parties shall have the opportunity to ask questions of the other's witnesses. The Hearing Officer and school board members may ask questions of any witness.
  - 8. After the Complainant and the Employee have presented their respective cases, the Superintendent shall then present the basis of his/her decision which led to the appeal, if a decision was rendered. The Complainant and Employee shall have the opportunity to ask the Superintendent questions. The Hearing Officer and board members may also ask questions of the Superintendent.
  - 9. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the Hearing Officer rules otherwise. All witnesses must take an oath or affirmation administered by the School Board President/ Chairperson, Hearing Officer or other person authorized by law to take oaths and affirmations.
  - 10. The Hearing Officer shall admit all relevant evidence. The Hearing Officer may limit unproductive or repetitious evidence. The strict rules of evidence do not apply. *Moran v. Rapid City Area School Dist.*, 281 N.W.2d 595. 602 (S.D. 1979) ("This [school board hearing related to teacher contract nonrenewal] does not mandate nor necessitate the use of strict evidentiary rules.").
  - 11. Both parties shall be given the opportunity to make a closing statement, with the Complainant having the first opportunity, followed by the Employee, and then the Superintendent. The Complainant shall be given the opportunity for a brief rebuttal.
  - 12. After the evidentiary hearing, the School Board shall continue to meet in executive session for deliberations. No one other than the Hearing Officer may meet with the Board during deliberations. During deliberations, the Board may seek advice from an attorney who did not represent any of the parties in the hearing. Consultation with any other person during deliberation may occur only if a

representative of the Complainant, Employee and Superintendent are present. The Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date.

13. Within twenty (20) calendar days of the hearing, the School Board shall render its decision and issue its written Findings of Fact, Conclusions of Law and Decision. The time frame for rendering a decision may be extended by the Board President for good cause and upon written notification to the Complainant, Employee and Superintendent. The notification shall identify the reason for the extension and the date on or before which the decision shall be rendered.
14. The decision of the School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Board will reconvene in open session. The Board may uphold, reverse, or modify the Superintendent's decision, or render a decision on the merits of the complaint in the absence of a Superintendent's decision. Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion, shall be in writing and approved by the Board. The Complainant, Employee, Principal and Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the School Board.
15. If the Complainant is dissatisfied with the School Board's decision, the Complainant may appeal the decision by filing an appeal to the circuit court pursuant to SDCL Ch. 13-46.

**REFERENCES**

**State Reference:**

SDCL

**Federal Reference:**

USC Title

**Adoption History**

First Reading	Date		
Approved			



Was a meeting held between the person having the complaint and the employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If a meeting was held, when was it held, what happened at the meeting and what was the outcome of the meeting: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

If a meeting was not held, explain why not: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

Resolution requested/sought by complainant: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Complainant

\_\_\_\_\_  
Date School Official Completing the Report Form

Step 1 mutually agreeable resolution was reached: Yes \_\_\_\_\_ No \_\_\_\_\_

If resolution, manner in which the complaint was resolved:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Complainant (initial/date) \_\_\_\_\_ Employee (initial/date) \_\_\_\_\_

If no mutually agreed upon resolution was reached, I request a decision by the Principal on the merits of the complaint:

Yes \_\_\_\_ No \_\_\_\_ Complainant (initial \_\_\_\_\_) Date \_\_\_\_\_

Yes \_\_\_\_ No \_\_\_\_ Employee (initial \_\_\_\_\_) Date \_\_\_\_\_

**NONDISCRIMINATION IN FEDERAL PROGRAMS  
COMPLAINT APPEAL TO THE SUPERINTENDENT**

I/We Appeal the Principal's Step 1 decision for the following reason(s): [With specificity, Complainant should state how or why the Complainant believes the Principal's decision is wrong] :

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ATTACH A COPY OF THE COMPLAINT REPORT AND THE PRINCIPAL'S DECISION.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Complainant

\_\_\_\_\_  
Date Received

\_\_\_\_\_  
Superintendent



SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>ACAB</b>
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**PROHIBITION AGAINST AIDING OR ABETTING SEXUAL ABUSE**

Employees, contractors and agents of the Douglas School District 51-1 are prohibited from assisting another school employee, contractor or agent in obtaining a new job if the District or the employee, contractor or agent of the District has knowledge of, or probable cause to believe, that the employee engaged in sexual misconduct with a minor or a student in violation of the law.

Assisting includes but is not limited to giving a positive recommendation to a potential employer, but does not include the routine transmission of administrative and personnel files or information related to name of employee, contractor or agent, dates of employment/contract, and position held or work performed.

"Probable cause exists where the facts and circumstances within the [person's] knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a man of reasonable caution that [an offense] has been or is being committed."<sup>1</sup>

Sexual misconduct is the umbrella term federal regulators use to categorize behavior that includes sexual assault, unwanted sexual contact, and sexual harassment. <sup>2</sup>

The requirements of this prohibition do not apply if the information giving rise to probable cause has been properly reported to a law enforcement agency, or any other authorities as required by local, state or federal law or regulations, AND at least one of the following conditions applies:

1. The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor or agent engaged in sexual misconduct regarding a minor or student in violation of the law; or
2. The school employee, contractor or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or
3. The case or investigation remains open and there have been no charges filed against or indictment of the school employee, contractor or agent within four years of the date on which the information was reported to a law enforcement agency.

<sup>1</sup> State v Stuck, 434 N.W.2nd 43 (SD 1988)

<sup>2</sup> Rice University Student Judicial Programs, Sexual Misconduct Policy

**REFERENCES**

**State Reference:**

State  
State v Stuck  
SDCL 13-10-15

SDCL 60-4-12

**Federal**

Rice University/Student Judicial Programs

USC Title 20 1681-1688

USC Title 20 7926

**Adoption History**

First Reading	06/27/2019		
Approved	07/22/2019		

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>ACB</b>
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**NONDISCRIMINATION ON THE BASIS OF  
HANDICAP/DISABILITY**

It will be the policy of the District to adhere to the concept of nondiscrimination on the basis of handicapping conditions. The Board will support section 504 of the Rehabilitation Act of 1973. In doing so the Board will:

1. Not discriminate against a qualified handicapped person in any aspect of school division employment solely on the basis of handicap.
2. Make facilities, programs and activities accessible, usable, and open to qualified handicapped persons.
3. Provide free appropriate education at elementary and secondary levels, including nonacademic and extracurricular services and activities, to qualified handicapped persons.
4. Not exclude any qualified handicapped person solely on the basis of handicap from participation in any preschool education or day care program or activity or any adult education or vocational program or activity.
5. Provide each qualified handicapped person with the same health, welfare, and social services as are provided other persons.

The Board holds the general view that:

1. Discrimination against qualified handicapped persons solely on the basis of handicap is unfair.
2. To the extent reasonably possible, qualified handicapped persons should be in the mainstream of life in a school community.

Accordingly, employees of the District will comply with the above requirements of the law and any regulations approved by the Board or its administration for ensuring a policy of nondiscrimination on the sole basis of handicap. The Board designates the superintendent or superintendent's designee to act as the District's compliance officer for employees and students.

No person in the District will, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activities.

**REFERENCES**

**Legal References:**  
 20 USC §1400 et seq. (Education of individuals with disabilities)  
 29 USC §794 (Nondiscrimination under Federal grants and programs)  
 34 CFR part 300 et seq. (Assistance to states for the education of children with disabilities)  
 42 USC §12101 et seq. (Equal Opportunity for individuals with disabilities)  
 Americans with Disabilities Act of 1990

**Adoption History**

First Reading	08/24/2014		
Approved	09/08/2014		

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>ADA</b>
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**MISSION STATEMENT**

Prepare all students to meet the challenges of an ever-changing world.

**REFERENCES**

**State Reference:**

**Federal Reference:**

**Adoption History**

<i>Date First Reading</i>	02/12/90	
<i>Approved</i>	02/27/90	
<i>First Reading - Revision</i>	03/23/93	
<i>Approved - Revision</i>	04/13/93	
<i>First Reading – Revision</i>	11/06/06	
<i>Approved – revision</i>	11/27/06	

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>AEA</b>
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**TOBACCO-FREE SCHOOLS**

The District recognizes its duty to promote the health and safety of students, staff and citizens on district property and during school-sponsored activities. In accordance with this responsibility, it is the intent of the School Board to establish a tobacco-free school environment that demonstrates a commitment to helping students resist tobacco use and that emphasizes the importance of adult role modeling.

The use, possession, or promotion of tobacco on school property by students, employees, vendors, visitors and invitees is prohibited. Students and employees are also prohibited from using or promoting tobacco at school-sponsored activities off school property. Students participating in school activities are also subject to such rules as may exist pursuant to an applicable activity code of conduct.

For the purposes of this policy:

1. "Tobacco" means any substance or item, in any form, containing tobacco and electronic nicotine delivery devices (e-cigarettes), which may not contain tobacco;
2. "School property" means all district-owned, rented or leased buildings, grounds and vehicles;
3. "School-sponsored activity" means any planned, organized, endorsed, or supervised activity involving district students or staff that occurs either before, during or after regular school hours;
4. "Promotion" means the use or display of tobacco-related clothing, bags, lighters, or other material that is designed to encourage the acceptance or use of tobacco.

Students violating this policy shall be subject to disciplinary action pursuant to District policy. A student in violation of this policy may also be required to complete a written assignment. The assignment is for the purpose of helping the student understand the consequences of tobacco use. It shall be given to the building principal or principal's designee, will be grade appropriate for purposes of length and content, and may include, but is not limited to, research on South Dakota QuitLine.

District employees in violation of this policy will be subject to disciplinary action. Visitors, vendors and invitees in violation of this policy will be subject to appropriate consequences, which may include being directed to leave school property.

The Superintendent **or designee** shall provide reasonable public notification of the District's policy within student and staff handbooks.

**REFERENCES**

**State Reference:**

SDCL 13-8-39

SDCL 34-46-14

**Federal Reference:**

**Adoption History**

First Reading Approved	06/30/16 07/14/16		
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SECTION	A	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>AGA</b>
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**CONTESTED HEARINGS**

The Board may be required to assume a judicial role to ensure adherence to district policy. All contested matters will be heard in a fair and impartial manner; and the Board will resolve all disputes. All contested hearings shall adhere to the procedures outlined in this policy.

**HEARING**

- Hearings involving personnel and students are closed to the public.
- Requests for hearings to be conducted in open session will be considered by the Board.
- A verbatim record of the hearing will be made.
- Closed hearing records will be sealed pending a determination of the Board.

**CONDUCT OF THE HEARING**

- The Board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer.
- Each party may be represented by an attorney.
- Each party may make an opening statement.
- The complainant or petitioner shall present its case first.

**WITNESSES**

- All witnesses must take an oath or affirmation of truth.
- Witnesses may be present only when testifying.
- Each party may present, examine and cross-examine witnesses.
- The hearing officer may ask questions of witnesses and may allow other school board members to question witnesses.

**EVIDENCE**

- Each party may introduce evidence.
- All relevant evidence must be admitted.
- Unproductive or repetitious evidence may be limited by the hearing officer.
- Each party may raise objections. The basis for the objection must be stated.
- Each party may make a closing statement.

**DELIBERATION**

- After the hearing, the school board shall continue to meet in executive session for deliberation.
- No one other than the hearing officer may meet with the school board during deliberation.
- The school board may seek advice during deliberation from its legal counsel.
- Consultation with any other person during deliberation may occur only if representatives of the parties are present.

**DECISION**

- The decision of the Board must be based solely on the evidence presented at the hearing and must be effected by a motion made in open session.

- For closed hearings, the motion must omit the names of the parties.
- The Board shall notify the parties in writing of its decision.

### REFERENCES

**Legal References:**

SDCL 1-25-2 (Executive or closed meetings)  
 SDCL 1-26-18 (Rights of parties at hearings on contested cases)  
 SDCL 1-26-26 (Ex parte consultations by agency personnel)  
 SDCL 13-10 (School district employees)  
 SDCL 13-32 (Supervision of students and conduct of school)  
 SDCL 13-43 (Employment of teachers)  
 ARSD 24:07 (Student due process)

### Adoption History

First Reading	09/08/2014		
Approved	09/25/2014		

SECTION	<b>A</b>	TITLE	<b>Foundations and Basic Commitment</b>	FILE	<b>AH</b>
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**CONFLICT OF INTEREST DISCLOSURE AND AUTHORIZATION**

SDCL 3-23-6 states:

*“3-23-6. No board member, business manager, chief financial officer, superintendent, chief executive officer, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars of a ~~local service agency~~ school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity that receives money from or through the state may have an interest in a contract nor receive a direct benefit from a contract in amount greater than five thousand dollars or multiple contracts in an amount greater than five thousand dollars with the same party within a twelve-month period to which the ~~local service agency~~ school district, cooperative education service unit, or education service agency is a party except as provided in § 3-23-8.”*

**I. DEFINITIONS:**

- A. “School Official” refers to a school board member, business manager, chief financial officer, superintendent, chief executive officer, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars.
- B. “Interest in a contract” is when (1) a School Official, the spouse of a School Official or any other person with whom the School Official lives and commingles assets, is employed by a party to any contract with the school district; or (2) the School Official, the spouse of a School Official, or any other person with whom the School Official lives and commingles assets, receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.
- C. “Direct benefit from a contract” is when a School Official, the spouse of a School Official or any other person with whom the School Official lives and commingles assets (1) is a party to or intended beneficiary of the contract between the school district and a third party, or (2) has more than a five percent ownership interest in an entity that is a party to the school district contract, or (3) acquires property under the contract with the school district, or (4) receives compensation, commission, promotion, or other monetary benefit directly attributable to any contract.

**II. PROHIBITION:**

This policy prohibits School Officials board members, business manager, superintendent, and any other person who has the authority to enter into a contract or spend money on behalf of the school district from having an interest in a contract or receiving a direct benefit from one or more contracts between the school district and a third party, if the total contract amount is more than \$5,000 within a 12 month period, unless the School Official discloses to the school board his or her interest in the contract, or in the case of a direct benefit from the contract, discloses the direct benefit and receives school board authorization to receive the

benefit.

### III. EXCEPTIONS:

If any of the following apply, the School Official does not have an interest in the contract and does not derive a direct benefit from a contract, and disclosure (and authorization, if a direct benefit) is not required:

1. When the person's relationship to the contract is based solely on the value associated with the person's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the board member, business manager, chief financial officer, superintendent, or chief executive officer lives or commingles assets;
2. When the person's relationship to the contract is due to participating in a vote or a decision in which the person's only interest arises from an act of general application;
3. When the person's relationship to the contract is due to the person receiving income as an employee or independent contractor of a party with whom the ~~local service agency~~ school district, cooperative education service unit, or education service agency has a contract, unless the person receives compensation or a promotion directly attributable to the contract, or unless the person is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;
4. When the contract is for the sale of goods or services, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;
5. When the contract is subject to a public bidding process;
6. When the contract is with the official depository as set forth in SDCL 6-1-3;
7. When the person only receives income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred; or
8. When the contract or multiple contracts with the same party within a twelve-month period with whom the school district contracts in an amount less than five thousand dollars.

### IV. DISCLOSURE:

A School Official who has an interest in a contract or who receives a direct benefit from a contract must disclose to the school board the existence of a contract in which the person has an interest or receives a direct benefit.

1. The disclosure must include the following: (i) all parties to the contract, (ii) the person's role in the contract, (iii) the purpose or objective of the contract, (iv) the consideration or benefit conferred or agreed to be conferred upon each party, and (v) the duration of the contract;
2. The disclosure must be in writing;
3. To the extent circumstances allow, disclosure must be given prior to entering into any contract that requires disclosure, and if circumstances do not permit disclosure prior to entering into the contract then within forty-five days after entering into the contract, and if the contract extends into consecutive fiscal years, disclosure shall also be made at the annual reorganization meeting.
4. The school board will have a regular agenda item at the beginning of the school board meeting agenda at which time the school board will address conflict of interest disclosures.
5. Conflict of Interest Disclosures must be submitted to the President of the School Board, the Superintendent or the Business Manager, at least 5 calendar days before the scheduled meeting in order to be included in the posted meeting agenda for the next school board meeting. Conflict of Interest Disclosures submitted to the President of the School Board, the Superintendent or the Business Manager after the proposed agenda has been posted may be deferred until the following

school board meeting.

V. BOARD ACTION UPON DISCLOSURE:

1. Interest in the contract:
  - a. The school board is not required to authorize a School Official's interest in a contract;
  - b. The interest disclosure must be included in the official minutes of the school board (the official minutes are not required to be sent to the auditor-general and attorney general).
2. Direct benefit from a contract:
  - a. The school board shall review the disclosure and decide if the terms of the contract are fair and reasonable, and if the contract is contrary to the public interest.
    - i. if the school board determines the contract terms from which a direct benefit is derived are fair and reasonable, and that the contract is not contrary to the public interest, the school board shall vote to authorize the School Official to derive a direct benefit from the contract.
    - ii. After the school board authorizes a School Official to derive a direct benefit from a contract, no further disclosure or authorization related to the contract is required unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure must be made at the annual reorganization meeting but no new authorization is required.
  - b. If the school board determines the contract terms from which a direct benefit is derived are not fair and reasonable, or is contrary to the public interest, the school board shall vote to not authorize the School Official to derive a direct benefit from the contract. If the school board votes to not authorize a direct benefit, the contract is voidable and subject to disgorgement (i.e., the act of giving up on demand or by legal compulsion something that was obtained by illegal or unethical acts) or the person may resign from the school district.
  - c. The disclosure and school board action is public record.
  - d. The official minutes of the school board shall include the school board action on each disclosure and request for authorization to derive a direct benefit from a contract. A copy of the official school board minutes shall be sent to the Auditor- General and Attorney General within thirty (30) days of board approval of the minutes.
  - e. No school board member may participate in or vote upon a matter in which the school board member derives a direct benefit.

VI. MISCELLANEOUS:

1. Consequences for knowingly violating the conflict of interest laws set forth in SDCL Ch. 3-23:
  - a. It is a criminal violation for a School Official to knowingly violate the conflict of interest law.
  - b. A School Official who knowingly violates the conflict of interest law will be removed from office or employment and is disqualified from holding any public office, elective or appointive.
  - c. Any benefit which a School Official derived from the person's knowing violation of the conflict of interest law is subject to forfeiture.
  - d. Any contract made in violation of this policy may be voided by the school board.
2. The School District Attorney represents the school district and the school board and may answer questions about the law that address conflict of interest. As the school district attorney does not represent School Officials in their individual capacity, School Officials should consult with their own private attorney related to questions they may have regarding how this policy applies to their individual interests and contracts.

## REFERENCES

### Legal References:

SD Constitution, Article 8, §17

SDCL 1-27

SDCL 13-20-2.1

SDCL 13-43-1

SDCL 3-23-6

SDCL 3-23-7

SDCL 3-23-8

SDCL 3-23-9

SDCL 6-1-1

SDCL 6-1-17

SDCL 6-1-2

### Policy Reference:

BBF

BBFA

GBC

GBCA

## Adoption History

First Reading	07/14/16
Approved	08/15/16
First Reading – Revision	06/12/17
Approved – Revision	06/29/17

**Douglas School District 51-1**  
**CONFLICT OF INTEREST DISCLOSURE**  
This is a Public Document

Name of the school official requesting the waiver: \_\_\_\_\_

The disclosure is for the purpose of notifying the School Board of Douglas School District of:

- \_\_\_\_\_ an interest in a contract
- \_\_\_\_\_ a direct benefit from a contract

Identify the following:

a) all parties to the contract: \_\_\_\_\_

b) the person's role in the contract: \_\_\_\_\_

c) the purpose(s)/objective(s) of the contract: \_\_\_\_\_  
\_\_\_\_\_

d) the consideration or benefit conferred or agreed to be conferred upon each party: \_\_\_\_\_  
\_\_\_\_\_

e) the length of the contract: \_\_\_\_\_

f) any other relevant information: \_\_\_\_\_  
\_\_\_\_\_

If the disclosure relates to the school official deriving a direct benefit from a contract, explain how the terms of the contract are fair, reasonable, and not contrary to the public interest such that authorization should be granted by the school board.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of School Official

\_\_\_\_\_  
Date

**Douglas School District 51-1**  
**SCHOOL BOARD ACTION ON CONFLICT OF INTEREST DISCLOSURE**  
**OF A DIRECT BENEFIT**  
THIS IS A PUBLIC DOCUMENT

Conflict of Interest Disclosure of a Direct Benefit, dated\_\_\_\_\_

was received from\_\_\_\_\_.

The Disclosure was considered by the Douglas School District School Board during a meeting held on \_\_\_\_\_.

\_\_\_\_\_ The request for authorization was denied because the terms of the contract were determined to not be fair and reasonable, and/or were contrary to the public interest.

\_\_\_\_\_ The direct benefit from the contract was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest.

\_\_\_\_\_ The direct benefit was authorized because the terms of the contract are fair and reasonable, and not contrary to the public interest such that a waiver should be granted, subject to the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
School Board President Signature

\_\_\_\_\_  
Printed Name

\*\*\*\*\*  
Upon School Board approval of the official minutes of the meeting when the School Board acted upon the above Conflict of Interest Disclosure, a copy of the official minutes will be emailed to the Auditor General and mailed to the Attorney General.

SECTION	<b>G</b>	TITLE	<b>Personnel</b>	FILE	<b>GCBDC</b>
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**Jury Duty Leave**

A Douglas School District employee shall be granted administrative leave with pay and no loss of accumulated time for the actual service required for the jury duty selection process or to perform jury duty service or when subpoenaed to testify in a hearing during school hours on a matter in which he/she is not a named party. The following procedures shall apply:

1. An employee shall notify their supervisor of the summons for jury duty or subpoena to testify.
2. If an employee is dismissed from the jury duty selection process, the employee shall request the court to provide documentation, i.e. a Certificate of Jury Service, to indicate the date and time of arrival and dismissal.
3. If an employee is selected for jury duty service, documentation of the date and time they are released must be provided.
4. If an employee receives prior notice that the jury duty selection process has been cancelled, the employee must report to the work assignment location to complete the regularly scheduled workday or use personal leave or annual leave, if applicable, for an absence from duty.
5. Administrative leave shall be approved for the time the employee actually uses to report for the jury duty selection process or jury duty service. The approved time includes travel to and from the court location and must occur during the regularly scheduled workday.
6. If an employee is dismissed from the jury duty selection process or jury duty service during their regularly scheduled workday, the employee shall:
  - a. Report to the unit of assignment, as soon as time allows, to complete the remaining half or whole day of scheduled work, or,
  - b. If the employee chooses not to return to work, the employee shall use personal leave or annual leave, if applicable, for the remaining half or whole scheduled workday. Sick leave may not be used for the jury duty selection process or service. If personal leave or annual leave is not available, the employee shall be placed on leave without pay.

**All fees received for State or Federal Court appearances or services shall be retained by the employee. For State Court, the employee shall receive his/her regular salary less any amount received for services,**

**up to but not in excess of his/her daily rate of pay. For Federal Court, the employee shall receive his/her regular salary with no reduction for the amount received. For both State and Federal Court, within twenty (20) days, the employee is required to present the court check to Human Resources for verification of leave time.**

**REFERENCES**

**State Reference:**  
SDCL 16-13-41  
**Federal Reference:**  
USC Title

**Adoption History**

First Reading	7/14/2014		
Approved	8/11/2014		
First Reading Revision	7/11/2022		

**Commented [1]:** Eliminates redundancy, aligns with ASBSD,

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BA</b>
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**BOARD OPERATIONAL GOALS**

~~There is a basic concept of responsibility related to service as a member of the Board of Education. Board members are individually and collectively trustees in serving the community and the state for the educational welfare of the community's children.~~ The Board is responsible to the people for whose benefit the school district has been established, and committed to the education of all students as appropriate to the best of their individual abilities. It is charged with accomplishing this while also being responsible for wise management of resources available to the district. By virtue of its responsibility and commitment, the Board must establish those purposes, programs, and procedures that will respond to the district's immediate and long range needs.

The Board must fulfill these responsibilities by functioning primarily as a legislative body to formulate and adopt policy, by selecting an executive officer to implement policy and by evaluating the results. Further, it must carry out its functions openly, while seeking the involvement and contributions of the public, students and staff in its decision-making processes.

~~As selected representatives of the public, board members are subject to close scrutiny, particularly at board meetings. They are expected to be well informed members, who are alert to the wishes of the community, use good judgment and demonstrate insight and understanding in reaching decisions. Freedom from prejudice, bias or commitment to special interests is essential.~~

Additionally, the Board commits itself to the following objectives:

1. To interpret the educational needs and aspirations of the community, and to meet them through the formulation of policies that stimulate the learner and the learning process;
2. To continually evaluate the district's educational goals and their implementation in the district schools;
3. To formulate a sound fiscal policy in the interests of fiscal economy;
4. To provide the superintendent with sufficient and adequate guidelines to effectively carry out the goals and objectives of the school district.
5. To maintain effective communication with the public served by the schools, and with staff and students in order to maintain awareness of attitudes, opinions, desires and ideas.

**REFERENCES**

**State Reference:**  
SDCL  
**Federal Reference:**  
USC Title

Adoption History			
First Reading	08/17/78		
Approved	09/13/78		
First Reading	09/25/14		
Approved	10/14/14		

Box Elder

**DOUGLAS SCHOOL DISTRICT**  
**Board Policy**  
**(REVISED)**

South Dakota

**Commented [1]:** Revised, Legal references only, ASBSD version

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BB</b>
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**SCHOOL BOARD LEGAL STATUS**

The School Board derives its authority from the Constitution of the State of South Dakota, from acts of the State Legislature, the electorate of the district and regulations of the State Board of Education and the State Board of Vocational Education.

As expressed in the law, the Board is the governing board of a school district and is created "...for the purpose of organizing, maintaining, and locating schools and for providing educational opportunities and services for all citizens residing within the school district."

The school board shall consist of five members whose terms shall be for three years except as otherwise provided by law and two associate school board members from Ellsworth Air Force Base as per Board Policy BL.

In accordance with the Legislature's repeal of SDCL 13-8-6 and to prevent unequal representation per board member, all members of the school board will be elected at large. Thus, at the time of election or vacancy, positions may be filled by any resident voter in the district who has otherwise complied with the proper election procedure. In accordance with state law, all school board members shall be entitled to complete the term of office to which that member was elected. Nothing in this policy should be construed as prohibiting re-election of a board member at the natural expiration of a term. However, any contest for the expired seat will be conducted as an at-large election.

**REFERENCES**

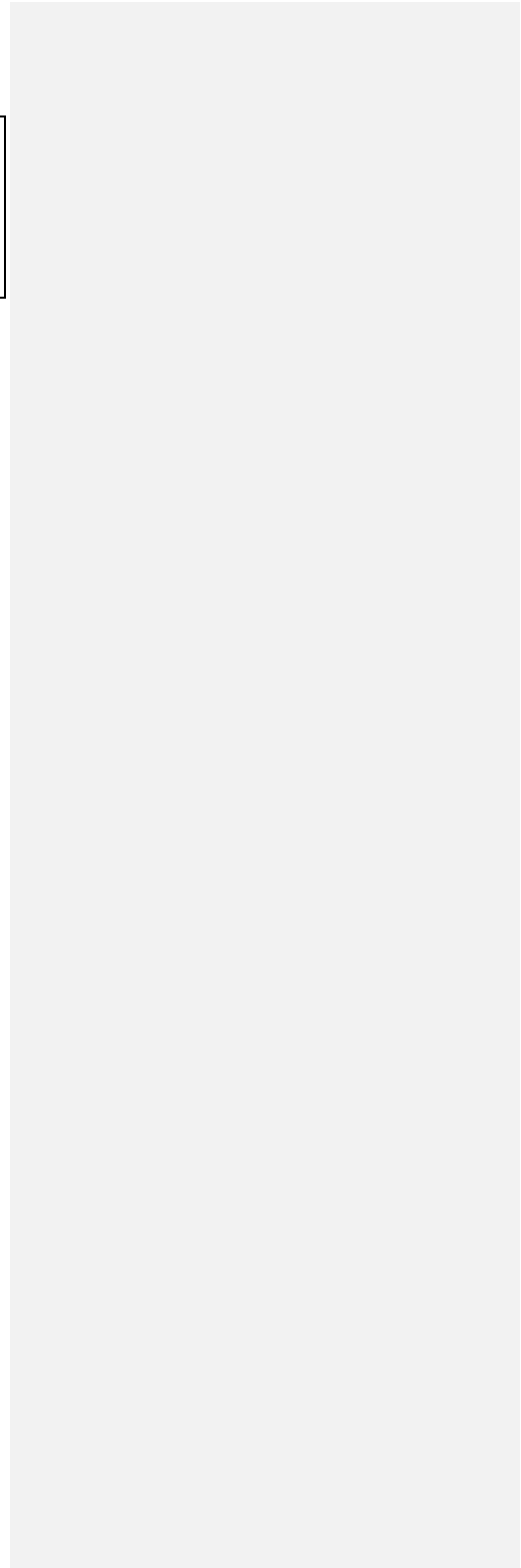
**State References**

- SDCL 13-6-13.1 [Former school dist. representation areas for consolidated districts](#)
- SDCL 13-6-2 [Legislative policy](#)
- SDCL 13-8-1 [School board defined](#)
- SDCL 13-8-2 [Composition and terms of office](#)
- SDCL 13-8-3 [Petition to increase size of board & representation areas](#)
- SDCL 13-8-4 [Elections and terms of office after increase of size of board](#)
- SDCL 13-8-5 [Waiting period after election on size of board](#)
- SDCL 13-8-7.1 [School board member representation areas](#)

**Adoption History**

Fir st Re adi ng	08/ 17/ 78		
Ap pro ve d	09/ 13/ 78		
Fir st Re adi ng - Re visi on	09/ 11/ 95		
Ap pro ve d	09/ 25/ 95		
Fir st Re adi ng - Re visi on	09/ 08/ 03		
Ap pro ve d - Re visi on	09/ 29/ 03		
Fir st Re adi ng	09/ 25/ 14		

Ap pro ve d	10/ 14/ 14		



**Commented [1]:** No changes. Aligns ASBSD

SECTI ON	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBA</b>
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### SCHOOL BOARD POWERS AND AUTHORITY

Under the laws of South Dakota, the School Board acts as the governing body of the public schools with full powers of direction and control. The Board derives its authority from the state legislature and will function within the framework of state and federal laws and regulations, court decisions and attorney general opinions.

Recognizing the authority of the state, the Board considers the following its general functions:

1. To select and employ a Superintendent of schools and support him or her in the discharge of his or her responsibilities.
2. To formulate and enact policy and to delegate the application of policies to the Superintendent and his staff, who will be held responsible for the effective administration and supervision of the entire school system.
3. To provide for the planning, expansion, improvement, financing, construction and maintenance of the physical plant of the school system.
4. To establish and maintain records, accounts, archives, management methods and procedures incidental to the conduct of school business.
5. To approve the budget, financial reports, audits, major expenditures, payment of obligations and policies that enable the administration to formulate regulations and other guides for the orderly accomplishment of business.
6. To estimate and levy taxes for the operation, support, maintenance, improvement and extension of the school system.
7. To adopt courses of study and provide instructional materials.
8. To employ support and certificated personnel to carry out school programs, and provide fair and equitable compensation.
9. To evaluate the educational program to determine the effectiveness with which the schools are achieving the educational purpose of the school system.
10. To provide for the dissemination of school district information to the public and maintain

open lines of communication with the community.

### REFERENCES

**State Reference:**

SDCL 13-8-1  
SDCL 13-8-39  
SDCL 13-10-2

### Adoption History

Fir st Re adi ng	08/ 17/ 78		
Ap pro ve d	09/ 13/ 78		
Fir st Re adi ng - Re visi on	09/ 25/ 14		
Ap pro ve d	10/ 14/ 14		

Box Elder

**DOUGLAS SCHOOL DISTRICT**  
Board Policy  
**(REVIEW)**

South Dakota

Commented [1]: No changes. Aligns ASBSD.

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBAA</b>
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**BOARD MEMBER AUTHORITY**

The powers delegated to a School Board by the state are delegated to the Board as a whole. No authority is granted Board members acting as individuals.

The Board exercises its powers and duties only in properly called meetings, where a majority of the Board constitutes a quorum to transact business. Except when performing a specific duty as ordered by the Board, the decision and actions of a single member of the Board are not binding on the entire Board.

**REFERENCES**

**State Reference:**  
SDCL 2-14-15  
SDCL 13-8-10  
SDCL 13-8-39

**Adoption History**

Fir st Re adi ng	09/ 25/ 14		
Ap pro ve d	10/ 14/ 14		

**Commented [1]:** No changes. Aligns ASBSD

SECTION	B	TITLE	FILE
		<b>Board Governance and Operations</b>	<b>BBB</b>

### SCHOOL BOARD ELECTIONS

The School Board shall select the date of the annual school election by resolution no later than the first regular meeting after January 1st of each year. The annual election shall be held between the second Tuesday in April and the third Tuesday in June between the hours of 7:00 a.m. and 7:00 p.m..

The school district and the municipality have the option of holding combined school district-municipal elections. Subject to approval of the governing bodies, the combined election may be held on the date set by the school district or the general municipal election (second Tuesday in April). Expenses and all other governmental responsibilities of a combined election are to be shared in an agreed upon manner by the governing bodies of the school district and the municipality.

Following each annual school election held pursuant to SDCL 13-7-10, the School Board, within 60 days of the official canvas, shall include in the school board minutes the following information:

1. The number of registered voters of the school district on the date voter registration closes;
2. The number of registered voters of the school district who voted in the election;
3. The percentage of registered voters of the school district who voted in election;
4. The date of the election, and if the election was held in conjunction with a regular municipal election as provided in SDCL 13-7-10.1 or with the regular June primary as provided in SDCL 13-7-10.3.

If the annual election was not held because there was not a contested vacancy for the School Board and no question was submitted to the voters, the School Board shall provide that information in the school board minutes.

### REFERENCES

**State Reference:**

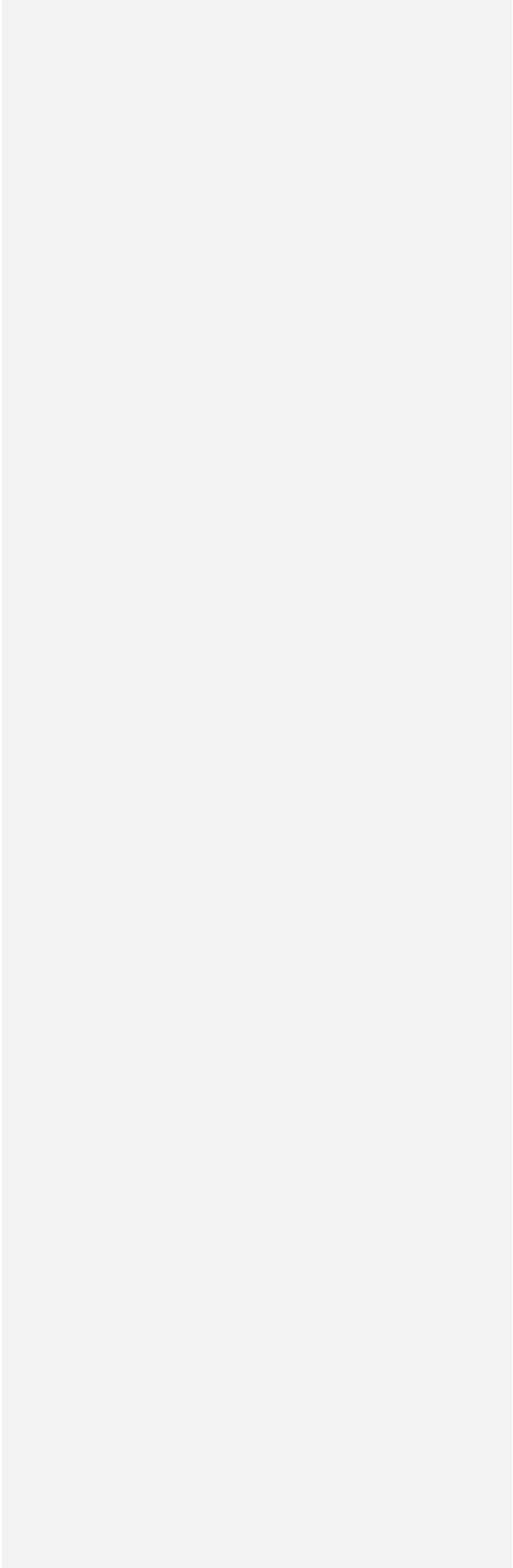
SD Constitution Article 7-1 (Right to vote)  
SD Constitution Article 7-2 (Voter qualification)  
SD Constitution Article 7-3 (Elections)  
SDCL 12-14-1  
SDCL 13-6-13.1  
SDCL 13-7  
SDCL 13-8-2  
SDCL 13-8-3  
SDCL 13-8-4

SDCL 13-8-7.1  
SDCL 13-8-25

**Adoption History**

Fir st Re adi ng	8/1 7/7 8		
Ap pro ve d	09/ 13/ 78		
Fir st Re adi ng- Re visi on s	09/ 11/ 95		
Ap pro ve d- Re visi on	09/ 25/ 95		
Fir st Re adi ng- Re visi on	11/ 13/ 00		
Ap pro ve d- Re visi	11/ 27/ 00		

on			
First Reading	09/25/14		
Approved	10/14/14		
First Reading – Revisions	6/27/19		
Approved	7/22/19		



Box Elder

**DOUGLAS SCHOOL DISTRICT**  
Board Policy  
**(REVIEW)**

South Dakota

**Commented [1]:** No changes. Aligns ASBSD

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBBA</b>
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**SCHOOL BOARD MEMBER QUALIFICATIONS**

A person is legally qualified to become a member of a school board if he or she is a United States citizen, complies with the provisions of law relating to the registration of voters and is a qualified elector, at least 18 years of age and not otherwise disqualified.

In accordance with state law, no elective county, municipal, or state officer or holder of any other office, whose duties are incompatible or inconsistent with the duties of the school board member will be eligible for such membership. This includes the elected offices of legislator, county commissioner and the municipality.

**REFERENCES**

**State Reference:**

SDCL 13-7-3  
SDCL 12-3-1  
SDCL 3-1A

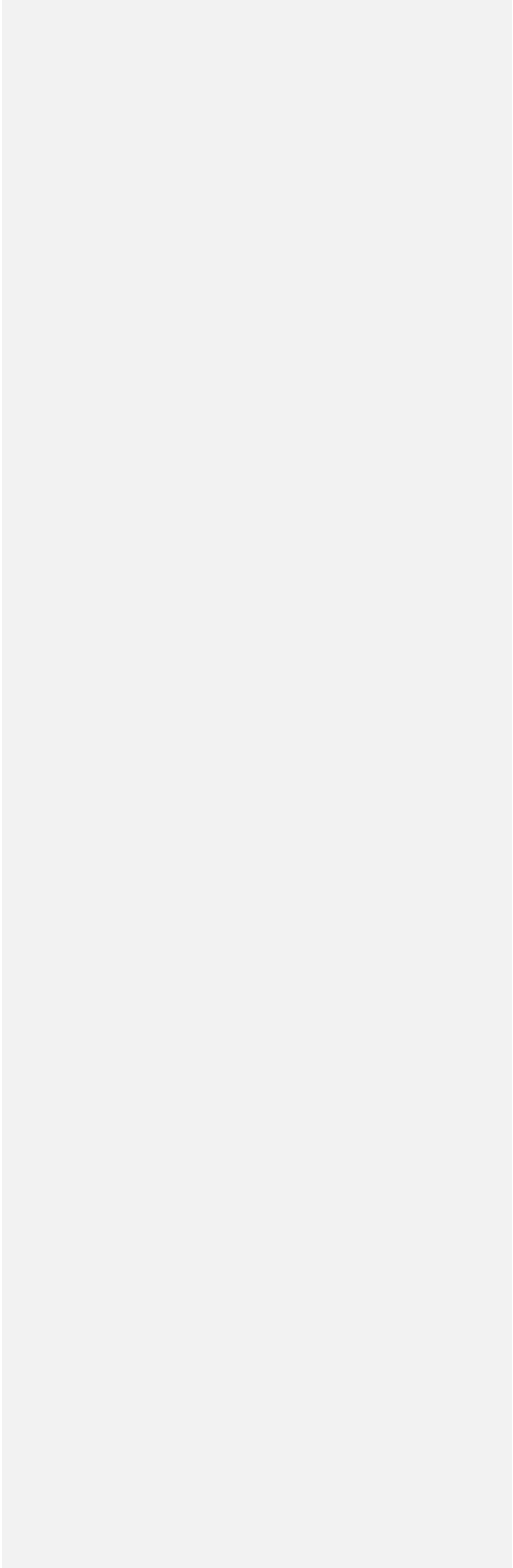
**Cross References:**

BBFA: Board Member Conflict of Interest  
GBCA: Staff Conflict of Interest

**Adoption History**

Fir st Re adi ng	08/ 17/ 7		
Ap pro ve d	09/ 13/ 78		
Fir st	09/ 25/		

Reading - Revisions	14		
Approved	10/ 14/ 14		



Box Elder

**DOUGLAS SCHOOL DISTRICT**  
**Board Policy**  
**(REVIEW)**

South Dakota

Commented [1]: No changes proposed

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBBB</b>
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**BOARD MEMBERS OATH OF OFFICE**

School board members, before taking office, shall take and sign the following oath or affirmation as required by law. Newly elected members will take and subscribe to the oath on the second Monday in July at the annual meeting, at which time they also assume their duties of office. Appointed members will take and subscribe the oath at the meeting following their appointment. All oaths will be filed in the office of the business manager.

“Do you solemnly swear, or affirm, that you will support the Constitution of the United States and the Constitution of the State of South Dakota; and that you will faithfully and impartially perform your duties as a member of the Board of Education of the Douglas School District 51-1, Pennington and Meade Counties, South Dakota, to the best of your ability, and in accordance with the laws now in effect and hereafter to be enacted, during your continuance in said office, and until your successor is elected and qualified?”

**REFERENCES**

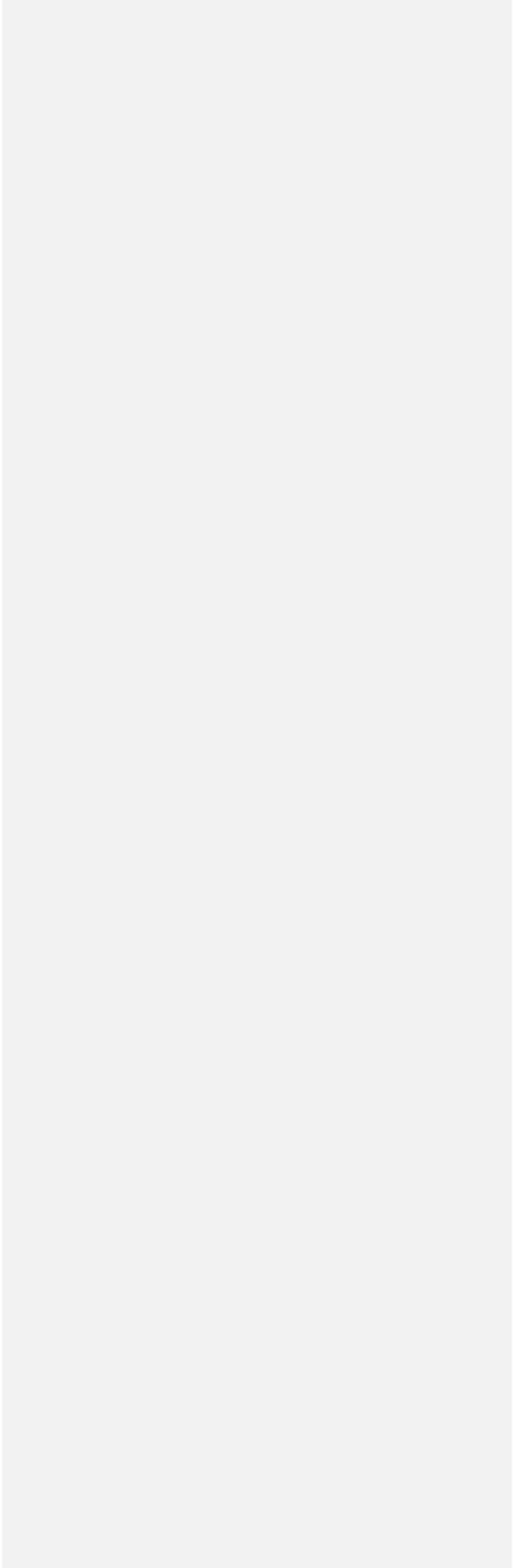
**State Reference:**  
SD Constitution Article 21-3 (Oath of office)  
SDCL 3-1-5  
SDCL 3-1-8  
SDCL 13-8-14  
SDCL 13-8-15

**Federal Reference:**  
USC Title

**Adoption History**

Fir st Re adi ng	08/ 17/ 78		
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Ap pro ve d	09/ 13/ 78		
Fir st Re adi ng	09/ 25/ 14		
Ap pro ve d	10/ 14/ 14		



**Commented [1]:** No changes. Aligns ASBSD.

SECTI ON	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBC</b>
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### BOARD MEMBER RESIGNATION / REMOVAL FROM OFFICE

According to the provisions of state law, a vacancy occurs on the School Board when an Incumbent:

1. Dies.
2. Is removed from office.
3. Fails to qualify as provided by law.
4. Ceases to be a resident of the district, or representation area, where elected.
5. Is convicted of an infamous crime or of any offense involving a violation of the official oath of office.
6. Has a judgment obtained against him for breach of official bond.
7. Becomes incapable of attending to the duties of a board member.
8. Assumes the duties of an office incompatible with the duties of the board member.
9. Resigns and a successor is appointed and qualified as prescribed by law.

The resigning member will continue to serve in his/her official capacity as a Board member until the successor is appointed and qualified as prescribed by law.

### REFERENCES

**State Reference:**

SD Constitution Article 16 (Impeachment and removal from office)  
SDCL 3-17-6  
SDCL 3-17-7  
SDCL 3-17-8  
SDCL 3-17-9  
SDCL 3-17-10  
SDCL 3-17-11  
SDCL 13-8-22  
SDCL 13-8-23  
SDCL 13-8-24

**Cross References:**

BBE: Unexpired Term Fulfillment

**Adoption History**

Fir st Re adi ng	09/ 25/ 14		
Ap pro ve d	10/ 14/ 14		

**Commented [1]:** Updated SDCL References  
**Commented [2]:** Aligns ASBSD

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBE</b>
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**SCHOOL BOARD MEMBER VACANCY**

When a vacancy occurs on the Board due to the failure to elect a person to succeed a school board member whose term has expired, or an elected school board member’s failure to qualify, or a school board member’s resignation, the vacancy shall be filled by all school board members, including the vacating member.

When a vacancy occurs on the Board due to death of a board member, is removed from the board pursuant to law, ceases to be a resident of the school district or representation area where elected (A school board member who is displaced from the District by flood, tornado, fire, or other natural disaster may continue to serve until the expiration of the member’s term.), is convicted of any infamous crime or of any offense involving a violation of the member’s official oath, has a judgment obtained against the member for breach of the member’s official bond, is incapacitated and is unable to attend to the duties of the position, or assumes the duties of an office incompatible with the duties of a school board member, the remaining board members are responsible for the appointment of a new board member.

The new appointee will qualify as if elected, at or before the next school board meeting. The appointee will serve until the next succeeding election, at which time a successor will be elected to serve the unexpired term.

**REFERENCES**

**State Reference:**  
SDCL 3-14  
SDCL 6-1-22  
SDCL 13-8-14  
SDCL 13-8-22  
SDCL 13-8-23  
SDCL 13-8-24  
SDCL 13-8-25

**Policy Reference:**  
BBEA

**Adoption History**

First Reading	9/25/14		
Approved	10/14/14		
First Reading – Revision	10/26/15		
Approved	11/09/15		
First Reading – Revision	06/30/16		
Approved	07/14/16		

**Commented [1]:** No changes. ASBSD Version

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BBEA</b>
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**UNEXPIRED TERM FULFILLMENT PROCEDURE**

Appointments to unexpired terms will be made by the Board as follows:

1. An announcement of the vacancy will be published in the official newspaper.
2. The announcements will invite individuals to submit applications or nominations to the Board by a date set by the Board. An application form may be obtained at the school business office.
3. The Board will meet in executive session to discuss qualifications, interests, attitudes, and goals of the potential candidate.
4. The Board will interview potential appointees in executive session.
5. The appointment of the new member will be made by a majority of the Board members at an open meeting.
6. Action on the appointment will be included on the published agenda for the meeting.

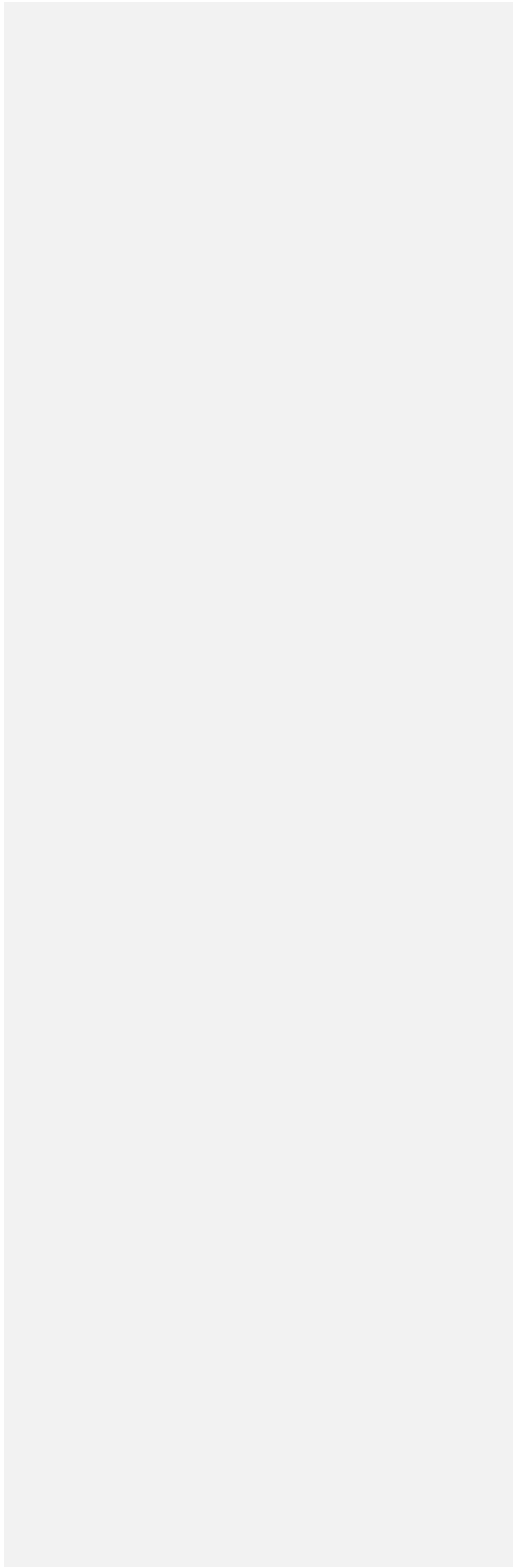
**REFERENCES**

**State Reference:**  
SDCL 13-8-14

**Adoption History**

First Reading	9/25/14		
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Ap pro ve d	10/ 14/ 14		



**Commented [1]:** No changes. ASBSD version.

SECTION	B	TITLE	FILE
		<b>Board Governance and Operations</b>	<b>BBF</b>

### BOARD MEMBER CODE OF ETHICS

Members of the District's Board of Education are elected or appointed officials of local government, and are responsible for governing the educational system of the public school district. Each Board of Education governing board member shall:

1. adhere to the principle that the responsibility of the school board is to govern the District, which includes but is not limited to establishing goals, planning, developing effective policies, and evaluation.
2. practice good stewardship of the District's resources.
3. leave the daily administration of schools to the Superintendent.
4. in an effort to become a more effective board member, keep themselves informed of local, state and national education issues through individual study and professional development.
5. recognize and follow the legal principles that (a) the authority vests with the majority of the members of the governing board when assembled in meetings as authorized by law, (b) no individual school board member has, or a minority of school board members have, the legal right to bind the District, and (c) no individual school board member may make decisions on behalf of the District unless upon approval of a majority of school board members.
6. make informed decisions on matters brought before the school board.
7. recognize and adhere to the policy that it is the responsibility of the school board to plan, make, implement, appraise, and enforce policies and that it is not the responsibility of the school board or school board members to run the day-to-day operations of the District.
8. observe and enforce federal and state laws and regulations.
9. respect the limited intent and scope of executive sessions as set forth in statute.
10. respect confidential communications made during executive sessions held pursuant to SDCL 1-25-2 and shall not divulge privileged communications made during executive session held pursuant to SDCL 1-25-2 unless required by law, and shall respect confidential communications related to students and employees, and shall not discuss such confidential information at home, at work or in public.

11. distinguish between personal views and those of the school board when making public comments regarding school district matters.
12. present information to the school board without distortion and accurately represent facts concerning school district matters in direct or indirect public statements.
13. maintain professional relationships in a manner which are free of vindictiveness, recrimination and harassment.
14. refer persons having complaints to the applicable complaint policy and appropriate school administrator; refrain from giving an opinion on the merits of the complaint unless, following the complaint procedure required in the school board complaint policy, the matter is before the school board.
15. respect the legitimacy of the goals and interests of other school board members and respect the rights of other school board members to pursue goals and policies different from their own.
16. respect, require and contribute to the maintenance of order and decorum in proceedings before the school board.
17. be honest, patient, dignified, and courteous to those with whom he/she deals with in his/her official capacity.
18. diligently discharge responsibilities and dispose promptly of the business of the school district for which he/she is responsible.
19. inform the school board president or school district business manager as soon as possible upon learning that he/she will not be in attendance at a school board meeting.
20. refrain from personal, professional, business and financial dealings that interfere with or are in conflict with, or give the appearance of interfering with or being in conflict with, the performance of official duties.
21. not use the office of a school board member to promote political candidates or partisan political activities.
22. not accept nor offer any gratuities, gifts, services, or things of value that (a) impair professional judgment, (b) offer special advantage or benefit to any person or organization, or (c) provide a direct or indirect personal benefit.
23. not commit any act of moral turpitude or gross immorality.
24. render a decision as a school board member only after having discussed the matter with other board members in a legal school board meeting, after having reviewed applicable information and data, and after having considered recommendations including but not limited to recommendations from school administration.

25. support Board decisions made by the majority of governing board members, subject to a board member's right to formally make a motion at a school board meeting to have the decision reconsidered or rescinded.
26. not have any direct pecuniary interest in a contract with the school district or furnish directly any labor, equipment or supplies to the district unless the amount involved is less than five thousand dollars (\$5,000).
27. not participate in discussion or vote on any issue in which he/she has an actual or the potential of a conflict of interest in the following circumstances:
  - a. a "direct pecuniary interest, (a matter benefiting the board member's own property or affording a direct financial gain);
  - b. an "indirect pecuniary interest" (a matter that financially benefits one closely tied to the board member, such as an immediate family member or an employer);
  - c. a "direct personal interest" (a matter that benefits a blood relative or close friend in a non-financial way); and
  - d. an "indirect personal interest" (a matter in which the board member individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies); or
  - e. when at least two-thirds of the governing board members vote that there is an identifiable conflict of interest that should prohibit the member from voting on specific matter.
28. Pursuant to SDCL 1-25-2(1), the Board of Education may enter into executive session to discuss the performance of an elected school board member, which may include discussing a perceived or alleged violation of this policy. Should the majority of school board members determine that a school board member has violated one or more provisions of this policy, the school board may, in open session, reprimand the school board member for a violation of the School Board Member Code of Ethics.

## REFERENCES

**State Reference:**

SDCL 3-16-16  
 SD Constitution Article 8-17  
 SDCL 6-1-1  
 SDCL 6-1-2  
 SDCL 6-1-17  
 SDCL 13-7-3  
 SDCL 13-20-2.1  
 SDCL 13-43-1  
 Hanig v. City of Winner 2005 SD 10, 692 N. W. 2d 202

**Cross References:**

BBA: School Board Powers and Duties  
 BBAA: Board Member Authority  
 BBBA: Board Member Qualifications  
 BBFA: Board Member Conflict of Interest

BCC: Appointed Board Officials

**Adoption History**

Fir st Re adi ng	9/2 5/1 4		
Ap pro ve d	10/ 14/ 14		

**Commented [1]:** No changes. ASBSD Version.

SECTION	B	TITLE	FILE
		<b>Board Governance and Operations</b>	<b>BBFA</b>

### BOARD MEMBER CONFLICT OF INTEREST

Public office is a trust created in the interest of the common good and for the benefit of the people. As public officials holding the respect and trust of the community, board members will not use the office for personal advantage.

A board member will not have any direct pecuniary interest in a contract with the school district or furnish directly any labor, equipment or supplies to the district unless the amount involved is less than five thousand dollars (\$5,000).

Each member shall decide if any potential conflict of interest requires disqualification from participation in board discussion or action. No board member may participate in discussion or vote on any issue in which the member has a conflict of interest if the following circumstances apply:

1. "Direct pecuniary interests," when a school board member votes on a matter benefiting the board member's own property or affording a direct financial gain;
2. "Indirect pecuniary interests," when a school board member votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
3. "Direct personal interest," when a school board member votes on a matter that benefits a blood relative or close friend in a non-financial way; and
4. "Indirect Personal Interest," when a school board member votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies; or
5. At least two-thirds of the Board votes that a member has an identifiable conflict of interest that should prohibit the member from voting on a specific matter.

### REFERENCES

**State Reference:**

SD Constitution Article 8-17  
SDCL 13-7-3  
SDCL 6-1-17  
SDCL 13-20-2.1  
SDCL 3-16

SDCL 6-1-1  
 SDCL 13-43-1  
 SDCL 6-1-2  
 Cross References:  
 BBBA: Board Member Qualifications  
 BCC: Appointed Board Officials  
 GBCA: Staff Conflict of Interest

**Federal Reference:**  
 USC Title

Adoption History			
Fir st Re adi ng	9/2 5/1 4		
Ap pro ve d	10/ 14/ 14		

**Commented [1]:** No changes. ASBSD version except for item #18 (Trista)

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**ANNUAL BOARD ORGANIZATIONAL MEETING**

The annual organizational meeting of the Douglas School District 51-1 Board of Education shall be held on the second Monday of July, unless otherwise designated by the Board at the previous regular meeting.

The meeting will be called to order by the business manager; and the oath of office will be given by the business manager to all newly elected Board members. The business manager will conduct the election for the School Board President. The Board President will assume office and will conduct the election for the Vice-President(s). The persons elected as President and Vice-President(s) shall serve in the positions until the next annual meeting.

**BUSINESS ITEMS**

Items of business to come before the annual meeting may include, but are not limited to:

1. Setting of date, time and place for regular meetings (required);
2. Designation of official depository or depositories (required);
3. Designation of the custodians of all accounts (required);
4. Authorize business manager to electronically transfer funds for specifically authorized purposes;
5. Designation of official legal newspaper (required);
6. Designation of school board member(s) who in addition to the school board president have the authority to countersign checks drawn by the business manager (required);
7. Authorization of continuation of existing funds or accounts and the establishment of any new accounts;
8. Establishment of school board committees (such as finance, curriculum, negotiations, facility, transportation, policy review and development and such other committees as determined by the school board) and school board representatives to serve on other boards as applicable (i.e., educational cooperative board, equalization board, ASBSD Delegate Assembly, etc.);
9. Setting bond for school business manager (required), and in discretion of school board, set bonds for school board members and other employees;
10. Appointment of truancy officer;
11. Appointment of Title IX compliance officer;
12. Appointment of Rehabilitation Act Section 504 compliance officer;
13. Appointment of Americans with Disabilities Act compliance officer;
14. Appointment of Age Discrimination Act compliance officer;

- 15. Appointment of Asbestos compliance officer;
- 16. Designation of parliamentary procedure guidelines for Board meetings;
- 17. Authorization of business manager to invest and reinvest funds in institution which serves greatest advantage to school district;
- 18. Setting school activities admission fees;
- 19. Authorization of superintendent to close school in emergency situations and in case of inclement weather; and setting chain of command in event superintendent is absent;
- 20. Establish Board of Education compensation;
- 21. Designation of school district attorney(s);
- 22. Authorize participation in associations, i.e. ASBSD, SDHAA, etc

**REFERENCES**

**State Reference:**

Legal:  
 SDCL 13-8-10  
 SDCL 13-8-14  
 SDCL 13-8-18

**Adoption History**

Fir st Re adi ng	8/1 7/7 8		
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Ap pro ve d	11/ 17/ 14		

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SECTION	B	TITLE	FILE	BCB
		<b>Board Governance and Operations</b>		

### BOARD OFFICERS

#### PRESIDENT

The president will preside at all meetings of the Board and will perform other duties as directed by law, state regulations and by this Board. In carrying out these responsibilities the president will:

1. Countersign all orders drawn by the business manager for claims approved by the Board;
2. Appoint or provide for the election of all committees, of which he or she will be an ex-officio member;
3. Confer with the superintendent as may be necessary and desirable on school or related Matters;
4. Call special meetings of the Board;
5. Be entitled to vote and discuss on all matters before the Board; and
6. Perform such other duties as may be prescribed by the Board.

#### VICE-PRESIDENT

The Vice-President of the Board will assume the duties and responsibilities of the President in his/her absence. He/she will also perform such other duties as may be assigned by the Board.

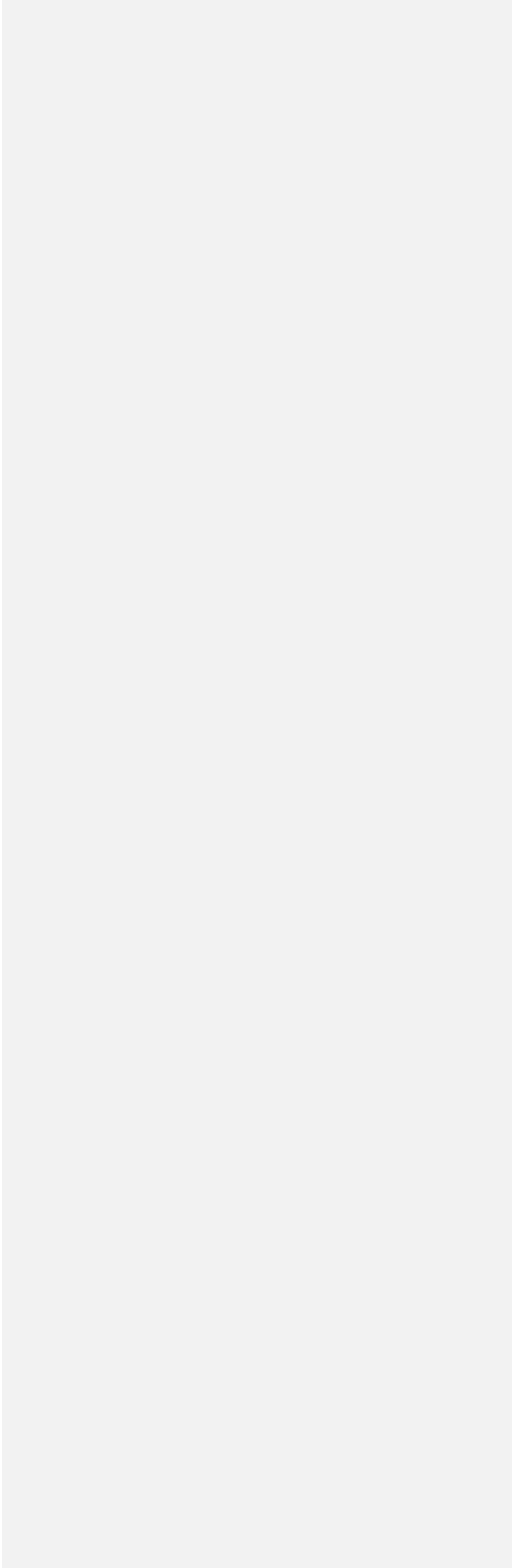
### REFERENCES

#### **State Reference:**

Legal:  
SDCL 13-8-10  
SDCL 13-8-26

### Adoption History

Fir st Re adi ng	10/ 27/ 14		
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SECTION	B	TITLE	FILE
		<b>Board Governance and Operations</b>	<b>BCC</b>

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### APPOINTED BOARD OFFICIALS

The Board will employ a business manager who may be authorized to make all purchases for the School Board, in compliance with state law and within the budget approved by the Board.

**Commented [2]:** Trista, do you feel like we should keep this policy

Other duties of the business manager (or the Board's designee) include:

**Commented [3]:** I'm not sure it's necessary. I would follow whatever you and Kevin feel is appropriate.

1. Keeping an accurate record of the Board proceedings. The business manager will be responsible for the safekeeping of the minutes.
2. Assuming responsibility for a detailed account of all Board business and preparation of periodic and annual reports of the receipts and expenditures of the district.
3. Issuing of all warrants for the payment of verified bills, salaries, and contracts approved for payment by the Board.
4. Publishing proceedings of the Board consistent with laws regarding the publication of Board minutes.
5. Preparing and distributing the agenda and other appropriate communications to Board members in advance of the regularly scheduled meetings.
6. Assuming responsibility for the conduct of school elections.
7. Performing such other duties as the Board may require and as required by law.

### REFERENCES

**State Reference:**

Legal:

SDCL 13-8-18

SDCL 13-8-35

SDCL 13-8-43

Cross References:

DH

DIC

**Adoption History**

Fir st Re adi ng	10/ 27/ 14		
Ap pro ve d	11/ 17/ 14		

**Commented [1]:** No changes, ASBSD version.

SECTION	<b>B</b>	TITLE	<b>Board Governance and Operations</b>	FILE	<b>BCD</b>
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**SCHOOL BOARD & SUPERINTENDENT RELATIONSHIP**

The Board believes the success of its mission to create a high-quality learning environment where all children can learn depends upon the cooperation between the Board and the Superintendent.

To achieve this common goal of student achievement, the board-superintendent governance leadership team will make every possible effort to develop a mutual understanding of their respective roles, create clear expectations and transparency, build professional trust and respect, and communicate openly and honestly with each other.

The Board believes that the legislation of policies is its most important function and that the execution of those policies is the function of the Superintendent.

The Superintendent will be responsible for the administrative and advisory functions of the Board. Strategic planning, policy- making and superintendent evaluation are the functions of the Board. The Board retains final authority within the District, as charged by the South Dakota Legislature.

Together, the Board and the Superintendent are a team, each playing a well-defined position

**REFERENCES**

**State Reference:**

SDCL

Cross:

BCD-E

**Commented [2]:** Need to review and update this form.

**Adoption History**

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