GARDEN CITY PUBLIC SCHOOLS

Regular Board of Education Meeting

Garden City USD 457

Monday, October 12, 2026 - 6:00 PM

Board Meeting Room, Educational Support Center, 1205 Fleming Street, Garden City, KS 67846

Board of Education Members:
Jacob Jenkins; Katherine Cole; Mark Hinde; Nathan Haeck; Randy Ralston; Rebecca Swender; Robin Bergkamp

Promise

Garden City Public Schools – Where Everyone Leads

Mission

Garden City Public Schools will deliver an unparalleled educational experience for our students, staff, and community.

Vision

Garden City Public Schools will deliver an unparalleled educational experience for our students, staff, and community that inspires excellence through rigorous coursework, individualized learning experience both inside and outside the classroom. We are committed to cultivating leadership in every student and staff member, empowering them to take initiative, inspire others, and drive positive change. At Garden City Public Schools, everyone leads.

A. **PLEDGE - Students from Plymell Elementary School will lead the Pledge of Allegiance**

B. **SILENT REFLECTION**

Thirty seconds of silent reflection will be observed.

C. **MEETINGS OF NOTE — Four or more board members may be in attendance at the following:**

- **Board-Faculty Meeting, Florence Wilson Elementary School, October 20, 2026, at 7:30 a.m.**
- **Board-Faculty Meeting, Garden City High School, October 20, 2026, at 2:30 p.m.**
- **Board-Faculty Meeting, Buffalo Jones Elementary School, October 22, 2026, at 4:10 p.m.**

D. **APPROVAL OF AGENDA with the following amendments:**

D.1. Additional classified personnel actions for consideration, Item F.3.

E. **DELEGATIONS, Q & A, PUBLIC COMMENTS, RECOGNITIONS, COMMITTEE REPORTS**

Public Forum Guidelines

The Board requests that all members of the public respect the rules outlined below so that everyone that wants an opportunity to provide input will be given the chance.

- *Speakers are asked to fill out a public comment form and present it to the Clerk of the Board.*
- *The board president may ask groups with the same interest to appoint a spokesperson to deliver the group's message.*
- *Speakers are asked to start by stating their name and address of where they reside.*

- *Speakers are limited to 5 minutes to make their presentations. Time taken for board members to read materials presented at the board meeting will be considered part of the time allotted for the individual's or group's presentation.*
- *Except to ask clarifying questions, board members shall not interact with speakers at the open forum.*

E.1. Recognition of FFA National Finalist Kealie Bryant

E.2. Recognition of Kansas Horizon Award Nominee Addyson Bjurstrom

E.3. Recognition of Kansas Teacher of the Year Nominee Kelly Myatt and Finalist Scott Glass

E.4. Building Presentation — Plymell Elementary School

F. **CONSENT AGENDA**

F.1. Minutes

F.1.a. Minutes of the September 24, 2026, Regular Board of Education Meeting

F.2. Accounts Payable totaling $946,392.06, noting that all major accounts contain adequate balances to meet current obligations.

Reviewers: Robin Bergkamp and Rebecca Swender

F.3. Personnel

F.3.a. Certified

F.3.b. Classified

G. **BOARD REPORTS**

G.1. Structured Literacy

H. **NEW BUSINESS**

H.1. Kenneth Henderson Middle School Expansion Project — The Board of Education is asked to consider and approve the final design and construction documents for the Kenneth Henderson Middle School expansion, along with the construction contract framework that will be included as part of the project's competitive bid package. (First read, action requested)

H.2. The Board of Education is asked to consider and approve a bid for the purchase of one Activity Bus — National Bus Sales — in the amount of $252,650.00. (First Read)

H.3. The Board of Education is asked to consider and approve the following Board of Education policy updates (First read):

H.3.a. GAN Travel Expenses

H.3.b. JBCDA Student In-District Transfers

I. **BOARD OPEN DISCUSSION**

- **Nathan Haeck**
- **Mark Hinde**
- **Jacob Jenkins**
- **Randy Ralston**
- **Rebecca Swender**
- **Robin Bergkamp**
- **Katie Cole**
- **Josh Guymon**

J. **NEXT BOARD MEETING**

The next regular meeting of the Board of Education will take place on Thursday, October 29, 2026, at 5:00 PM in the Board Meeting Room at the Educational Support Center, 1205 Fleming St., Garden City, Kansas.

K. **EXECUTIVE SESSION - After the completion of all other business, the Board of Education will adjourn to executive session for the following reason:**

K.1. Personnel matters for non-elected personnel.

L. **ADJOURNMENT**

MEMORANDUM

TO: Board of Education
THRU: Josh Guymon, Superintendent
FROM: Suzette Goldsby, Plymell Elementary
DATE: October 12, 2026
RE: Plymell Board Presentation

ISSUE:

Plymell has been scheduled to make a board presentation to the BOE.

BACKGROUND:

Our LiM Student Lighthouse Team will be speaking about Plymell Elementary's academic performance and growth as well as detailing our student leadership efforts and community involvement initiatives.
Thank you to the BOE for giving us the opportunity to present at a board meeting.

ALTERNATIVES:

No other alternatives applicable.

RECOMMENDATION:

No recommendations at this time.

FISCAL NOTE:

At this time there is no fiscal impact for the BOE to consider.

ATTACHMENTS:

No attachments, but students will be creating posters to show the board for our presentation.

Plymell Elementary

Oct. 12, 2026

Presented By:
Plymell Student Lighthouse Team

Student Lighthouse Team

Coordinators: **Ella Bailey & Hayes Hemmert**

Leadership Action Team

Lainey Hands
Hadley Nemechek
Adelyn Bayer
Jace Sekavec
Ashlynn Morris

Culture Action Team:

William Cott
Lydia Lee
Nolan Swender
Khloe Dreiling
Kennedy Brown

Academic Action Team:

Lainee Baker
Conner Finnegan
Aidira Varela
Sawyer Payne
Mason Selzer

Mission Statement

I will inspire, support and value all members of my Plymell Family. I am PROUD to be a PANTHER!

Fall FastBridge Data

Strengths:

- aReading- 73% met benchmark
- autoReading- 75% met benchmark
- aMath- 74% met benchmark
- Math Automaticity- 72% met benchmark
- earlyMath- 74% met benchmark

Areas of Growth:

- CBMReading- 52% met benchmark
- earlyReading- 35% met benchmark

Spring 2026 KAP

ELA:

- 3rd Grade- 39% at level 3 & 4
- 4th Grade- 67% at level 3 & 4
- 5th Grade- 60% at level 3 & 4
- 6th Grade- 50% at level 3 & 4

Math:

- 3rd Grade- 39% at level 3 & 4
- 4th Grade- 66% at level 3 & 4
- 5th Grade- 73% at level 3 & 4
- 6th Grade- 50% at level 3 & 4

Science

- 5th Grade- 47% at level 3 & 4

Community Partners

Community Partnership

By Grade Level

Kindergarten & 1st Grade- Finney County Humane Society & GCPD
2nd Grade- Salvation Army
3rd Grade- Finney County Sheriff's Office
4th Grade- Kansas Food Bank
5th Grade- Finney County EMS
6th Grade- Senior Center of Finney County/Meals on Wheels

Whole School- Leave a Legacy Foundation/Heartland Cancer Center

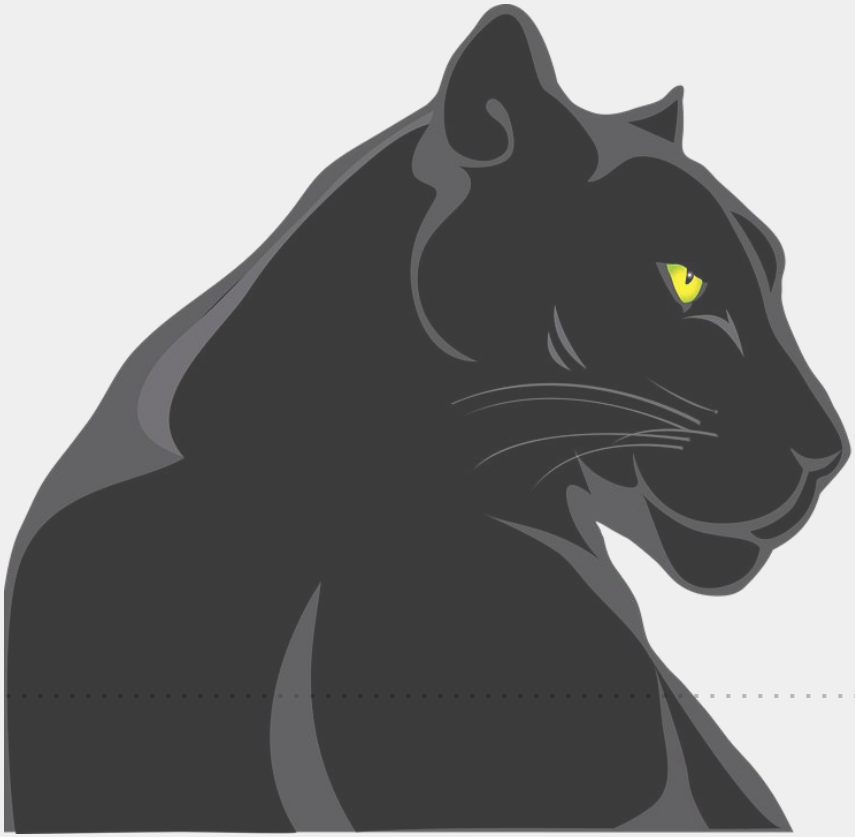
Junior Lighthouse Team

Plymell Legacy Mile

Plymell Leadership Day

Lighthouse Status Review

Thank you!



GARDEN CITY PUBLIC SCHOOLS

DRAFT* MINUTES *DRAFT

Regular Board of Education Meeting Thursday, September 24, 2026 - 5:00 PM

Board Meeting Room, Educational Support Center

1205 Fleming Street, Garden City, KS 67846

The Board of Education of Garden City USD 457 met for a Regular meeting on Thursday, September 24, 2026, at 5:00 PM in the Board Meeting Room, Educational Support Center, 1205 Fleming Street, Garden City, KS 67846.

Board members present were Jacob Jenkins; Katherine Cole; Mark Hinde; Nathan Haeck; Randy Ralston and Rebecca Swender. Robin Bergkamp was absent. Joining board members at the conference table was Superintendent, Josh Guymon. Also in attendance were Steve Nordby, Assistant Superintendent; and Jessica Nothern, Chief Financial Officer.

President Mark Hinde called the meeting to order at 5:00 PM.

A. **PLEDGE** – Everyone stood for the Pledge of Allegiance.

B. **SILENT REFLECTION** – Thirty seconds of silent reflection was observed.

C. **MEETINGS OF NOTE — Four or more board members may be present at the following:**

- Board-Faculty meeting, Garden City Achieve, September 30, 2026, at 3:30 p.m.
- Board-Faculty meeting, Edith Scheuerman Elementary School, October 1, 2026, at 7:45 a.m.
- Community Focus Groups for Strategic Planning, Horace Good Middle School, October 6, 2026, 5:15 p.m. (Dinner, review vision and data, reflect on theme areas, review and discuss actions, develop strategies for action and success.)
- Board-Faculty meeting, Garden City High School, October 7, 2026, at 2:30 p.m.
- Board-Faculty meeting, Victor Ornelas Elementary School, October 8, 2026, at 7:45 a.m.

D. **APPROVAL OF AGENDA with the following amendments:**

D.1. Additional certified and classified personnel actions for consideration, Item E.3.

Katie Cole arrived to the meeting at 5:02 PM.

Action(s):

I move to approve the meeting agenda as amended. This motion, made by Nathan Haeck and seconded by Jacob Jenkins, Carried.

Bergkamp:	Absent
Cole:	Yea
Haeck:	Yea
Hinde:	Yea

Jenkins: Yea
Ralston: Yea
Swender: Yea
Voting Summary: Yea: 6, Nay: 0, Absent: 1

E. **CONSENT AGENDA** – All consent agenda items were approved as amended.

Action(s):
I move to approve all consent agenda items as amended. This motion, made by Nathan Haeck and seconded by Jacob Jenkins, Carried.

Bergkamp: Absent
Cole: Yea
Haeck: Yea
Hinde: Yea
Jenkins: Yea
Ralston: Yea
Swender: Yea
Voting Summary: Yea: 6, Nay: 0, Absent: 1

E.1. **Minutes**
E.1.a. **Minutes** of the September 14, 2026, Regular Board of Education meeting – approved as presented.
E.2. **Accounts Payable** totaling $7,576,397.22, noting that all major accounts contain adequate balances to meet current obligations – approved as presented.
E.3. **Personnel** – All certified and classified personnel actions were approved as presented.
E.3.a. **Certified**
Appointment: Halley Boyd
Transfer: Katrina Unger from 1.0 first grade position at Plymell Elementary School to 1.0 dyslexia interventionist at the Educational Support Center effective for the 2027-28 academic year.
Supplemental Contracts: see attached
Position Changes:
- Opened 1.0 Read 180 position at Bernadine Sitts Intermediate Center
- Opened 1.0 interventionist position at Florence Wilson Elementary School
- Closed 1.0 social worker position at Charles Stones Intermediate Center
- Closed 1.0 newcomers position at Garden City High School

E.3.b. **Classified**
Resignations: Lainey Smith
Assignments: Alexis Arreola, Alisha Dugan, Yenis Guevara Flores, Kathy Gutierrez, Kendra Harman, Anayeli Martinez, Vanessa Miranda, Yesenia Montalvo Preciado, Frances Pena, Zoey Sarles, Karen Sanchez, Soe Say, Ashley Valdez, Tania Valdez Corona
Transfers:
- Vicente Gonzales from Maintenance l at Plant Facilities to Grounds l at Plant Facilities
- Leonard Lopez from Paraprofessional lll at Charles Stones Intermediate Center to Paraprofessional l at Juvenile Detention Center
- Maria Rico from Office Assistant l at Georgia Matthews Elementary School to Office Assistant ll at Georgia Matthews Elementary School

E.4. **Other**

E.4.a. **Approved the following Curriculum Council items:**

E.4.a.i. High School - Sports Med II — adjusting course credit from 0.5 to 1.0 (semester course to a year-long course) as recommended by the state for the Sports Med II Course.
E.4.a.ii. Middle School PreCTE Course Name Changes to Align with State Names Middle School PreCTE Course Name Changes.

NEXT BOARD MEETING - The next regular meeting of the Board of Education will take place on Monday, October 12, 2026, at 6:00 PM in the Board Meeting Room at the Educational Support Center, 1205 Fleming St., Garden City, Kansas.

F. **EXECUTIVE SESSION — After the completion of all other business, the Board of Education will adjourn to executive session for the following reason:**

F.1. **Personnel matters for non-elected personnel.**

Action(s):
Mr. President, I move we go into executive session for 15 minutes, to discuss a personnel matter pursuant to the non-elected personnel exception under KOMA, beginning at 5:05 PM and the open meeting will resume in the Board Meeting Room at 5:20 PM. I would like to invite Josh Guymon to join us in executive session. This motion, made by Nathan Haeck and seconded by Rebecca Swender, Carried.

Bergkamp:	Absent
Cole:	Yea
Haeck:	Yea
Hinde:	Yea
Jenkins:	Yea
Ralston:	Yea
Swender:	Yea

Voting Summary: Yea: 6, Nay: 0, Absent: 1

The open meeting resumed in the board meeting room at 5:20 PM. No action was taken.

G. **ADJOURNMENT** – There being no further business to come before the board, the following action was taken.

Action(s):
That the Board of Education meeting be adjourned at 5:22 PM. This motion, made by Randy Ralston and seconded by Rebecca Swender, Carried.

Bergkamp:	Absent
Cole:	Yea
Haeck:	Yea
Hinde:	Yea
Jenkins:	Yea
Ralston:	Yea
Swender:	Yea

Voting Summary: Yea: 6, Nay: 0, Absent: 1

Respectfully submitted,

Approved:

Jennifer Ramos, Clerk

Mark Hinde, President

BOARD OF EDUCATION

Certified Personnel Actions

October 12, 2026

APPOINTMENTS:

Luisa Hopkins, Garden City, Kansas, is recommended for a sixth grade position at Jennie Barker Elementary School. She is a former USD 457 teacher with three years' experience.

Carrie Pak, Garden City, Kansas, is recommended for a second grade position at Alta Brown Elementary School. She is a former USD 457 teacher with four years' experience.

TRANSFER:

Nema Mendoza – from adaptive/interrelated position at Florence Wilson Elementary School to adaptive/interrelated position at Abe Hubert Elementary School.

TUITION REIMBURSEMENT AGREEMENTS:

Cecilia Castro – Master's Degree

Norma Castro – Master's Degree

POSITION REQUESTS:

Gina Galpin, special education director, is requesting the following position changes:

- Close 1.0 adaptive/interrelated position at Florence Wilson Elementary School
- Open 1.0 adaptive/interrelated position at Abe Hubert Elementary School

BOARD OF EDUCATION

Classified Personnel Actions

October 12, 2026

TERMINATIONS	POSITION	BUILDING	DATE
Vianca Esquivel	Custodian I	Plant Facilities	09/24/2026
Haven Kiesel	Paraprofessional I	Alta Brown Elementary School	10/06/2026

RESIGNATIONS	POSITION	BUILDING	DATE
Mayra Magadan Santana	Bus Driver	Transportation	10/08/2026
Diana Martinez Martinez	Small Fleet	Transportation	09/24/2026
Veronica Veloz	Bus Driver	Transportation	09/30/2026

ASSIGNMENTS	POSITION	BUILDING	DATE
Alyssa Ortega	Para III	Victor Ornelas Elementary School	10/05/2026
Christopher Rosas	Bus Driver	Transportation	10/05/2026
Kay Way	Para I	Victor Ornelas Elementary School	10/05/2026
Candace Winter	Para II	Alta Brown Elementary School	10/01/2026

TRANSFERS	FROM	TO	DATE
Jiovanni Brown	Small Fleet - Transportation	Bus Driver - Transportation	09/25/2026
Steve Jessee	HVAC Specialist - Plant Facilities	Nutrition Delivery - Educational Support Center	10/05/2026
Jacqueline Linares	Paraprofessional II - Alta Brown Elementary School	Paraprofessional I - Alta Brown Elementary School	10/02/2026
Luke Martinez	Small Fleet - Transportation	Bus Driver - Transportation	09/24/2026
Isabel Pastrana Cid	Paraprofessional III - Garden City Achieve	Paraprofessional II - Georgia Matthews Elementary School	10/05/2026
Jacque Sower	Paraprofessional I - Plymell Elementary School	Paraprofessional I - Jennie Wilson Elementary School	09/30/2026

BOARD OF EDUCATION

Classified Personnel Actions Addendum

October 12, 2026

RESIGNATIONS	POSITION	BUILDING	DATE
Claudia Perez	Paraprofessional I	Garfield Early Childhood Center	10/02/2026

MEMORANDUM

TO: Board of Education
THRU: Josh Guymon, Superintendent
FROM: Heather Stegman, Director of Elementary Curriculum and Instruction
DATE: 10/07/2026
RE: Structured Literacy and Interventions Presentation

ISSUE:

Assistant Superintendent Nordby and Elementary Curriculum Director Stegman will provide an informational presentation on structured literacy and Garden City's efforts to ensure that all students have the foundational reading skills they need to succeed.

BACKGROUND:

Research shows that 95% of students can learn to read if instruction is systematic and explicit. As we have learned more about how student's brains learn to read, our reading instruction has made some important shifts in the way we teach.

This presentation will inform board members of the key components of structured literacy: phonology, sound-symbol association, syllables, morphology, syntax, and semantics as well as how the district is addressing these components in both core instruction and interventions.

ALTERNATIVES:

This presentation is for informational purposes only. No board action is required.

RECOMMENDATION:

N/A

FISCAL NOTE:

N/A

ATTACHMENTS:

Structured Literacy & Interventions Powerpoint

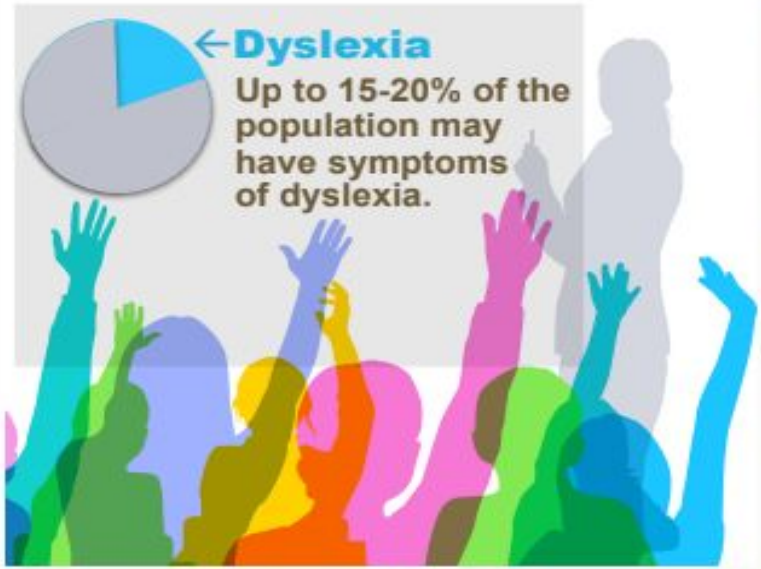
Structured Literacy
&
Interventions

USD 457
GARDEN CITY
PUBLIC SCHOOLS
EXCELLENCE - COMMUNITY - CHARACTER - COURAGE

*International Dyslexia Association

Why Structured Literacy?

Children with dyslexia are in nearly every classroom—but effective reading instruction is NOT.



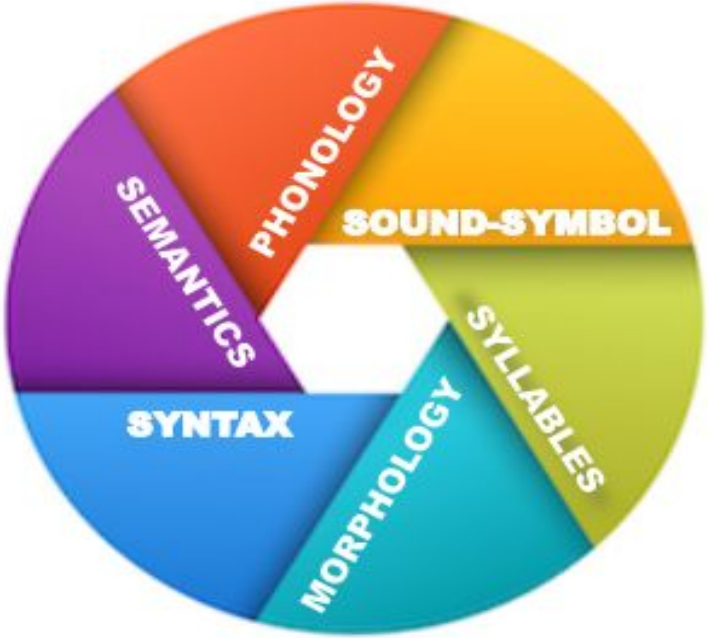
Learning to read can be a significant **challenge** for students with dyslexia. Fortunately, this challenge usually CAN be overcome with effective reading instruction. Unfortunately, if not overcome, lifelong consequences can be harsh.

Popular reading approaches (e.g., Guided Reading or Balanced Literacy) are not effective for students with dyslexia because these approaches do not focus on the **decoding** skills struggling readers need to succeed.

Structured Literacy explicitly teaches systematic word-identification/decoding strategies. These benefit most students and are *vital* for those with dyslexia.

STRUCTURED LITERACY PRIMER

Structured Literacy's ELEMENTS work together.



Structured Literacy's Evidence–Based Elements

Phonology (study of sound structure of spoken words) is a key element of Structured Literacy Instruction. **Phonemic awareness** (ability to distinguish / segment / blend / manipulate sounds relevant to reading/spelling) is central to phonology.

Sound-Symbol Association Once students develop phoneme awareness, they must learn the **alphabetic principle**—how to map phonemes to letters (**graphemes**) and vice versa.

Syllables Knowing the six syllable / vowel grapheme types helps readers associate vowel spellings with vowel sounds. Syllable division rules help readers divide / decode unfamiliar words.

Morphology A **morpheme** is the smallest unit of meaning in language. Studying base elements and affixes helps readers decode and unlock the meanings of complex words.

Syntax—the set of principles that dictate the sequence and function of words in a sentence—includes grammar, sentence structure, and the mechanics of language.

Semantics Semantics is concerned with meaning. The Structured Literacy curriculum (from the start) includes instruction in the comprehension and appreciation of written language.

STRUCTURED LITERACY PRIMER

These PRINCIPLES guide how Structured Literacy's elements are taught.

Structured Literacy's
Evidence-Based Teaching Principles

Systematic & Cumulative

Structured Literacy teaching is systematic and cumulative. **Systematic** means that organization of material follows the logical order of language. The sequence begins with the easiest and most basic concepts and elements and progresses methodically to the more difficult. **Cumulative** means each step is based on concepts previously learned.

Explicit Structured Literacy instruction requires direct teaching of concepts with continuous student-teacher interaction and does not assume students deduce concepts. (While **multisensory teaching** lacks the extensive research that validates Structured Literacy's other teaching principles, decades of clinical results support efficacy of simultaneous association of auditory, visual, kinesthetic-motor modalities for enhancing memory and learning in students with dyslexia.)

Diagnostic Teachers must be adept at individualizing instruction (even within groups) based on careful and continuous assessment, both informal (e.g., observation) and formal (e.g., with standardized measures). Content must be mastered to the degree of automaticity needed to free attention and cognitive resources for comprehension and oral/written expression.

STRUCTURED LITERACY PRIMER

Effective reading instruction for most children incorporates *all* this.

Inner Circle: Elements
Outer Circle: Teaching Principles

To ensure that *all* children have access to effective reading instruction, we must ensure that their teachers have BOTH the ...

✔ **deep content knowledge**
and
✔ **specific teaching expertise needed ...**

to teach these **elements** according to these **principles.**

Structured Literacy

INSTRUCTIONAL RECOMMENDATIONS

KANSAS STATE DEPARTMENT OF EDUCATION

Kansas leads the world in the success of each student.

KANSAS STATE DEPARTMENT OF EDUCATION

CHECKLIST

Structured Literacy Components Checklist

The Structured Literacy Components Checklist is intended to support school leaders and teachers in the analysis of current literacy instructional practices and to enhance literacy instruction to be aligned with the science of reading. The tool can be used as a basis for foundational conversations and collaborations, to determine professional learning needs, or to conduct brief and frequent walkthroughs throughout the school year. The checklist encompasses the necessary components and principles of structured literacy as documented in the *KSDE Evidence-Based Reading Instruction Guidelines.*

When used as the basis for foundational conversations and collaborations, the checklist should be used in combination with KSDE ELA Standards and scope and sequence recommendations from specific instructional resource materials.

When used as a walkthrough tool, the recommendation would be to focus on one or two components at a time during literacy instruction. Ensure that the teacher has a copy of this tool and that an overview has been provided. There is an area for comments that is intended for the leader to record evidence, note reflections or pose questions from the observation. Comments may be from teacher instruction; student learning or the instructional materials being used. This is not intended to be an evaluative tool for teachers.

It is recommended that professional learning occurs prior to the use of this document.

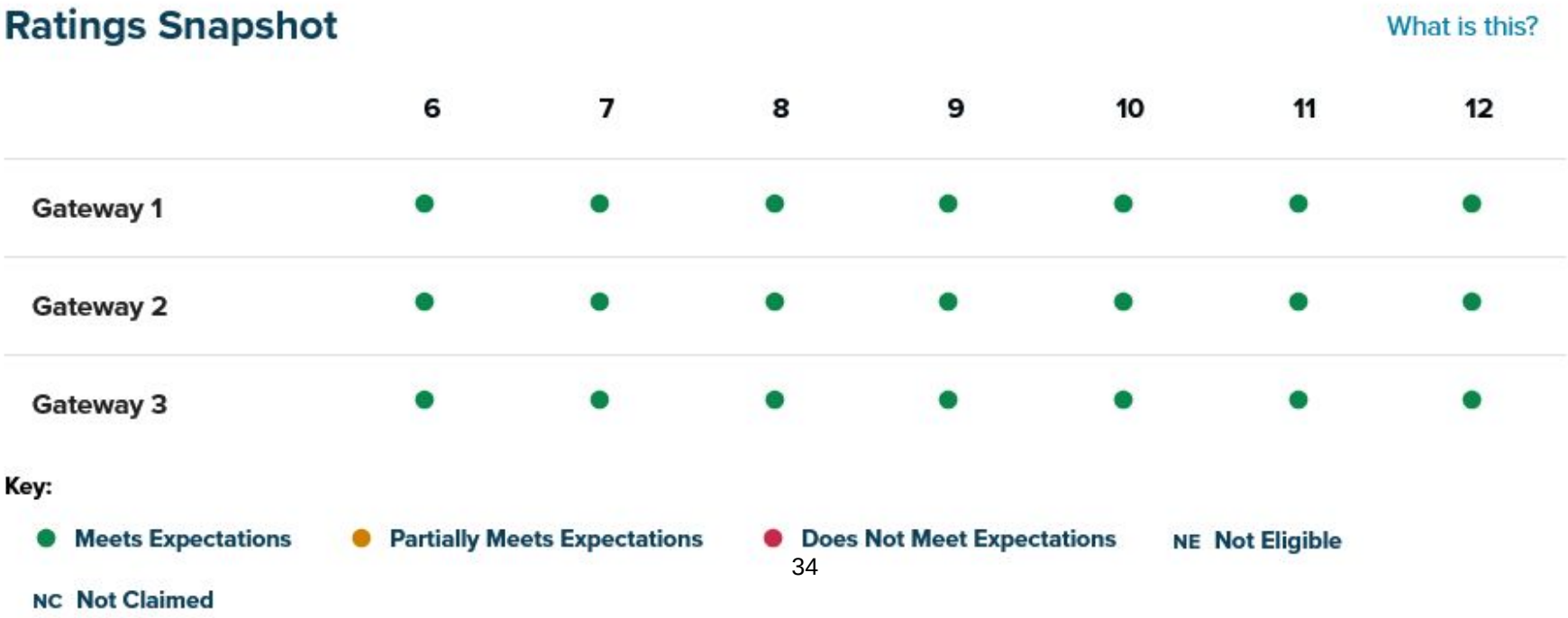
Observed ✔	Component Descriptor	Comments
Phonological Awareness		

Table 1.7: Progression of Word Study through the Grades

—	—	—	—	—	Greek-Derived Morphemes		
—	—	—	Derivational Morphology: Anglo-Saxon and Latin Roots, Prefixes, Suffixes				—
—	Inflectional Morphology			—	—	—	—
—	—	Common Syllables, Syllabification			—	—	—
—	Fluent Recognition of Word Families (Rime Patterns)			—	—	—	—
—	300–500 Sight Words		—	—	—	—	—
Phoneme-Grapheme Correspondences			—	—	—	—	—
Basic Phonological Awareness		More Complex Phonemic Awareness		—	—	—	—
K	1	2	3	4	5	6	7+

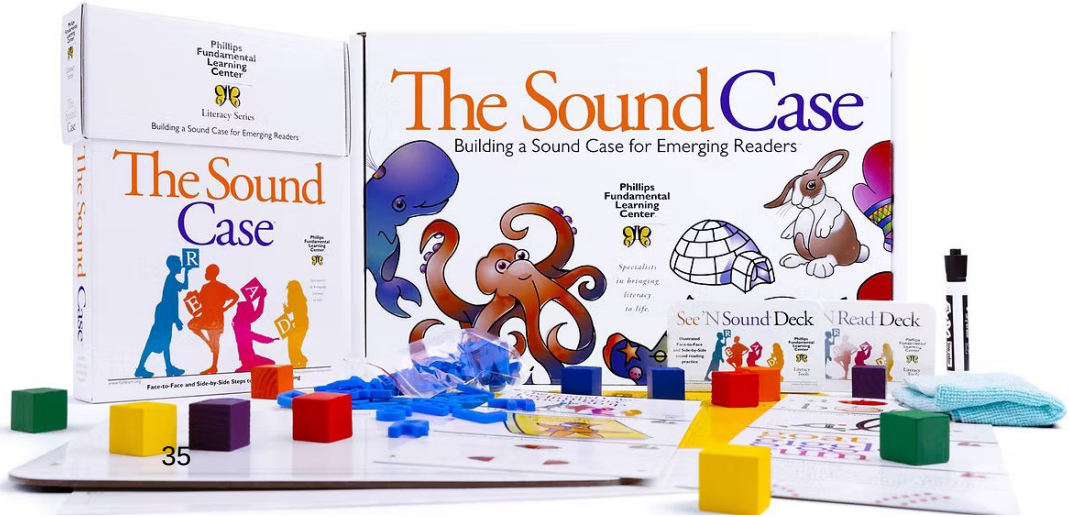
Ed Reports Breakdown of Into Reading

Ed Reports Breakdown of Into Literature



Partnership with Phillips

- Dyslexia Simulation
  - 123 staff participants
- Visit to Phillips Learning Center
- Sound Case Training
  - 86 Participants
- Alphabetic Phonics
  - Interventionists Summer 2027



Drew Thon, Chief HR Officer
1205 N Fleming St.
Garden City, KS 67846
mthon@gckschools.com
(620) 805-7020

TO: Board of Education
THRU: Josh Guymon, Superintendent
FROM: Drew Thon, Deputy Superintendent
DATE: October 9, 2026
RE: Kenneth Henderson Middle School Expansion

ISSUE:

The Board of Education is being asked to approve the final design and construction documents for the Kenneth Henderson Middle School expansion, along with the construction contract framework that will be included as part of the project's competitive bid package.

Approval will allow GMCN and district administration to finalize the bid package and move the project forward for competitive bidding.

BACKGROUND:

As part of USD 457's districtwide grade reconfiguration to a K–5 elementary, 6–8 middle school, and 9–12 high school structure beginning in Fall 2028, Kenneth Henderson Middle School must be expanded to accommodate additional students and programs.

Nick Nemechek with GMCN will present the final architectural drawings and construction documents to the Board and answer questions regarding the design prior to Board action.

The proposed expansion will increase the capacity of Kenneth Henderson Middle School to just over 850 students. The design addresses both the increased enrollment associated with the grade reconfiguration and several facility needs identified through the planning process.

Major components of the project include:

- Expansion of the building to accommodate the additional students associated with the 6–8 grade configuration.
- Creation of more secure entrances into the building.
- Larger band and orchestra rooms to accommodate increased student enrollment and program needs.
- Expansion of the weight room and related storage.
- Construction of a new wrestling room to provide appropriate space for the addition and continued growth of girls wrestling.

This project represents the current phase of improvements to Kenneth Henderson Middle School. Potential future improvements, including a second gymnasium, football field, and track, are not included in this project or this Board action.

Drew Thon, Chief HR Officer
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The construction contract framework was prepared by GMCN and reviewed by USD 457 legal counsel. Administration recommends approving the contract framework at the same time as the construction documents so prospective contractors receive the district's contractual requirements as part of the bid package. This allows bidders to understand the terms and conditions of the project before submitting a bid rather than attempting to negotiate significant contract provisions after bids have been received.

Following Board approval, GMCN and district administration will make any necessary minor, non-material technical adjustments to the documents and prepare the project for competitive bidding. The project is anticipated to be released for bid during the first week of November, with bids opened the week following Thanksgiving break.

Administration and GMCN will evaluate the bids and bring a recommended contractor and final construction contract amount to the Board of Education for consideration at the December 14, 2026 Board meeting. Construction is expected to begin following Board approval of the contractor, with the project scheduled for completion in time for the Fall 2028 grade reconfiguration.

The KHMS project is one component of the district's larger grade reconfiguration work. Architectural plans for Jennie Wilson, Bernadine Sitts Intermediate Center, and Charles Stones Intermediate Center will be brought to the Board separately for consideration as those projects progress through the design process.

ALTERNATIVES:

Option 1 – Approve as Recommended
Approve the final design and construction documents, approve the construction contract framework, authorize administration and GMCN to make minor non-material modifications as necessary, and authorize the project to proceed to competitive bidding.

Option 2 – Approve with Modifications
Approve the project subject to specific modifications identified by the Board prior to releasing the project for competitive bidding.

Option 3 – Do Not Approve
Do not approve the final design, construction documents, or contract framework at this time and direct GMCN and district administration to make additional revisions before returning the project to the Board.

Drew Thon, Chief HR Officer
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Garden City, KS 67846
mthon@gckschools.com
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RECOMMENDATION:

Administration recommends **Option 1**.

Recommended Motion:

"I move that the Board of Education approve the final design and construction documents for the Kenneth Henderson Middle School expansion, approve the construction contract framework as presented, authorize administration and GMCN to make minor non-material modifications as necessary, and authorize the project to proceed to competitive bidding."

FISCAL NOTE:

The Kenneth Henderson Middle School expansion will be funded through the district's Capital Outlay Fund.

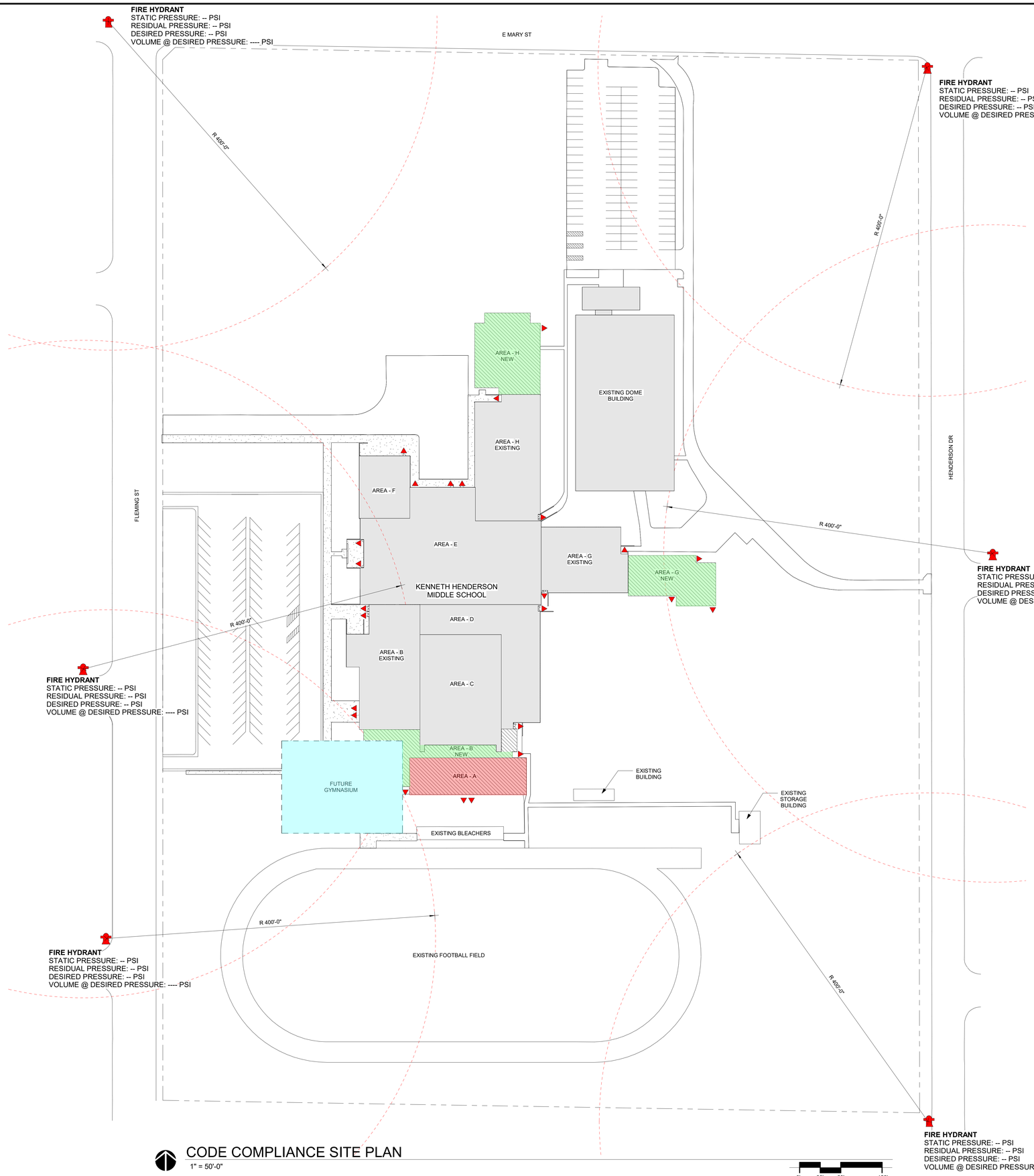
The final construction cost will be determined through the competitive bidding process. The recommended contractor and final contract amount will be presented to the Board of Education for approval at the December 14, 2026 Board meeting.

ATTACHMENTS:

- GMCN Presentation on KHMS expansion and contract

Best wishes,

Drew Thon
Chief HR Director
Garden City Public Schools - USD 457



CODE COMPLIANCE SITE PLAN

1" = 50'-0"

CODE PLAN LEGEND

- DESIGNATED EXITS
- FIRE HYDRANT
- NEW CONSTRUCTION
- EXISTING BUILDING

I. PROJECT INFORMATION:

A. PROJECT DESCRIPTION
NEW EXTENSION AND RENOVATION OF KENNETH HERDERSON MIDDLE SCHOOL. BUILDING WAS CONSTRUCTED IN 1977. CONSTRUCTION CONSISTS OF SLAB ON GRADE. STRUCTURAL FRAME SYSTEM CONSISTS OF METAL DECK ON STEEL BAR JOIST ROOF FRAMING SYSTEM. THIS IS SUPPORTED BY CONCRETE BEAMS AND COLUMNS. EXTERIOR WALLS REINFORCED MASONRY BLOCK WITH EXTERIOR BRICK VENEER. INTERIOR WALLS ARE A COMBINATION NON-BEARING MASONRY WALLS AND METAL STUDS WITH GYPSUM BOARD ON EACH FACE.

B. FACILITY NAME
KENNETH HENDERSON MIDDLE SCHOOL
2406 FLEMING, GARDEN CITY, KS 6757
CONTACT PERSON: Brandon Anderson
PHONE: 620-805-7000
EMAIL: banderson1@gckschools.com

C. REASON FOR SUBMITTAL
STATE LAW K.S.A. 31-150 K.A.R. 22-1-7 REQUIRES REVIEW OF ALL NEW BUILDINGS, BUILDING ADDITIONS, OR BUILDING REMODELS FOR REVIEW AND APPROVAL.

D. RESPONDING FIRE SERVICE
GARDEN CITY FIRE DEPARTMENT
302 N. 9th Street
Garden City, Kansas
(620) 276-1140

E. LOCAL BUILDING INSPECTION DEPARTMENT
GARDEN CITY INSPECTION DEPARTMENT
301 Nth 8th Street
Garden City, Kansas 67846
(620) 276-1120

F. WATER SUPPLY:
CITY OF GARDEN CITY
PUBLIC UTILITIES DEPT. (WATER)
140 HARVEST STREET
GARDEN CITY, KS 67846

G. THERE IS A FUTURE GYM ADDITION ANTICIPATED FOR THIS BUILDING

II. PROJECT CERTIFICATION:

A. ARCHITECT: GMCN ARCHITECTS INC.
115 E LAUREL STREET
GARDEN CITY, KS 67846
(620) 276-3244
CONTACT PERSON: Nick Nemechek
Email: nnemechek@gmcnarchitects.com

BUILDING CODES:

INTERNATIONAL BUILDING CODE	2018
INTERNATIONAL PLUMBING CODE	2018
INTERNATIONAL MECHANICAL CODE	2018
NATIONAL ELECTRICAL CODE	2017
INTERNATIONAL FIRE CODE	2012
NFPA 13	2010
AMERICANS WITH DISABILITIES ACT AND GUIDELINES PER SECTION 1007 & CHAPTER 11	2010
ICC 500 STORM SHELTER CODE	2014

III. HANDICAP PROVISIONS:

A. WALKS, INGRESS, EGRESS, PUBLIC TOILETS & DRINKING FOUNTAINS.

IV. OCCUPANCY / AREA / CONSTRUCTION

FIXTURE COUNT: IBC 2902.1

FIXTURE COUNT BASED ON FULL OCCUPANCY OF **3744**

WATER CLOSETS (MALE)	REQUIRED: 1872/50 = 38	PROVIDED: 36
WATER CLOSETS (FEMALE)	REQUIRED: 1872/50 = 38	PROVIDED: 30
LAVATORIES (MALE)	REQUIRED: 1872/50 = 38	PROVIDED: 23
LAVATORIES (FEMALE)	REQUIRED: 1872/50 = 38	PROVIDED: 23
DRINKING FOUNTAINS	REQUIRED: 3744/100 = 38	PROVIDED: 21

SERVICE SINK REQUIRED / PROVIDED 1 / 4

IV.a OCCUPANCY / AREA / CONSTRUCTION (GYM)

FIXTURE COUNT: IBC 2902.1

FIXTURE COUNT BASED ON FULL OCCUPANCY OF **1200**

WATER CLOSETS (MALE)	REQUIRED: 600/50 = 12	PROVIDED: 35
WATER CLOSETS (FEMALE)	REQUIRED: 600/50 = 12	PROVIDED: 30
LAVATORIES (MALE)	REQUIRED: 600/50 = 12	PROVIDED: 1
LAVATORIES (FEMALE)	REQUIRED: 600/50 =12	PROVIDED: 2
DRINKING FOUNTAINS	REQUIRED: 1200/100 = 12	PROVIDED: 5

SERVICE SINK REQUIRED / PROVIDED 1 / 4

V. BUILDING FIRE PROTECTION:

ACTIVE FIRE SAFETY SYSTEM
FIRE SPRINKLER SYSTEM PROVIDED THROUGHOUT THE BUILDING (PER NFPA 13) - EXCEPT EXISTING BUILDING AREA D, E, F & G.
FIRE ALARM SYSTEM (W/ BATTERY BACKUP)
SMOKE DETECTORS: YES (W/ BATTERY BACKUP) (PER NFPA 72)
EXIT LIGHTS & EXIT SIGNS: YES (W/ BATTERY BACKUP)
PORTABLE FIRE EXTINGUISHERS LOCATED AT MAIN ENTRANCES/EXITS AS SHOWN ON PLAN (PER 2018 IBC 906.1)
EMERGENCY LIGHTS: YES (W/ BATTERY BACKUP) (PER 2018 IBC 1008)

OCCUP
CALCUL E 1004.5)

New Addition
16,571 s.f.

New Storm Shelter Addition
6,350 s.f.

Future Gym Addition
14,420 +/- s.f.

PROGRESS PRINT
NOT FOR CONSTRUCTION
DATE: 2018/07/18

202529

GMCN ARCHITECTS • PLANNERS
115 E LAUREL GARDEN CITY, KS 67846 (620) 276-3244
www.gmcnarchitects.com

RENOVATIONS AND ADDITIONS TO KENNETH HENDERSON MIDDLE SCHOOL UNIFIED SCHOOL DISTRICT #457

2406 Flemming Garden City, Kansas

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ISSUE:

No	Date	Description

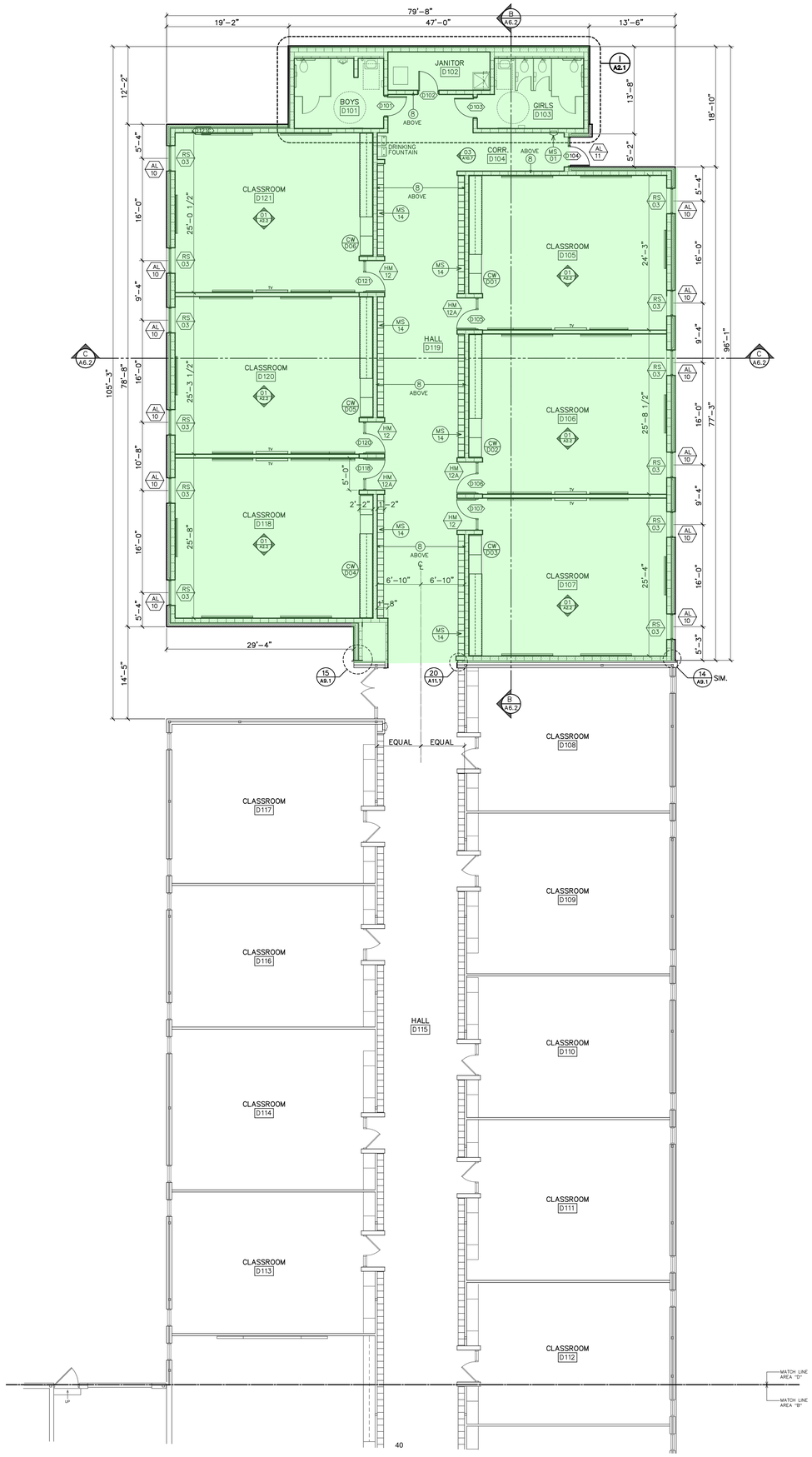
SHEET TITLE: CODE COMPLIANCE SITE PLAN

DATE: Issue Date

CF1.0

10/7/2026 2:03:42 PM

New Addition
7,010 s.f.



AREA 'D' FLOOR PLAN
SCALE: 1/8" = 1'-0"

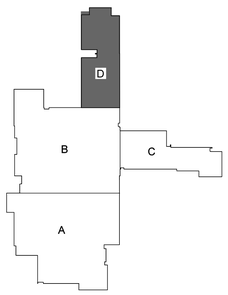
GENERAL NOTES

1. DIMENSIONS INDICATED ARE TO FACE OF FINISH MATERIAL OF PARTITION OR WALL AND GRID LINES, UON
2. REFER TO SHEET T1.2 FOR PARTITION TYPE AND INFORMATION
3. PROVIDE BLOCKING AT ALL WALL-MOUNTED ACCESSORIES (GRAB BARS, TV'S, ETC.) HARDWARE WHERE REQUIRED AND WALL-HUNG CABINETS
4. DIMENSION FROM EDGE OF DOOR TO ADJACENT WALL BE 4" UON.

PLAN NOTES

NOTE: PLAN NOTES MAY OR MAY NOT APPLY TO ALL SHEETS

1. CONTRACTOR TO SOAP IN NEW CMU FACES AS REQ'D FOR PLUMBING DEMOLITON
2. EXISTING H.M. DOOR FRAME TO BE PAINTED.
3. PAINT EXPOSED STRUCTURAL COLUMN.
4. AREA SHOWN HATCHED TO BE INFILLED WITH NEW COMPACTED SAND AND 4" CONCRETE SLAB.
5. EXISTING H.M. DOOR & DOOR FRAME TO BE PAINTED.
6. PROVIDE FINISHED END PANEL AND COUNTER END CAP.
7. CONTRACTOR TO REINSTALL EXISTING TOILET ACCESSORIES AFTER PAINTING IS COMPLETE.
8. FIREPROOF TOP OF WALL TO ROOF DECK AS AS REQ'D TO ACHIEVE A 1-HOUR RATING
9. INSTALL ALUM. METAL PLATE WALL PANELS (AMP-1) OVER EXISTING BRICK VENEER. SEE ELEVATIONS
10. STORM AIR INTAKE LOUVER



NEW KEY PLAN

202529

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www.gmcnarchitects.com

RENOVATIONS AND ADDITONS TO
KENNETH HENDERSON MIDDLE SCHOOL
USD #457 GARDEN CITY SCHOOLS
2406 Flemming Street Garden City, Kansas

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ISSUE:

NO.	DATE	DESCRIPTION

SHEET TITLE:
AREA "D" FLOOR PLAN

DATE:
OCTOBER 06, 2026

A1.4

GENERAL NOTES

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9. INSTALL ALUM. METAL PLATE WALL PANELS (AMP–1) OVER EXISTING BRICK VENEER. SEE ELEVATIONS
10. STORM AIR INTAKE LOUVER

MATCH LINE AREA "D"
MATCH LINE AREA "B"
MATCH LINE AREA "B"
MATCH LINE AREA "C"
CLASSROOM C100
CLASSROOM C101
CLASSROOM C102
CLASSROOM C103
CORRIDOR C104
CORR. C120
CLASSROOM C119
CLASSROOM C118
CLASSROOM C117
CLASSROOM C116
MATCH LINE AREA "B"
MATCH LINE AREA "A"
EQUAL
EQUAL
CORRIDOR C105
OFFICE C115
OFFICE C112
BAND C113
INSTRUMENT STORAGE C114
MUSIC STORAGE C111
ELECT. C110
SMALL PRACTICE C109
HALL C108
CHOIR C106
LARGE PRACTICE C107
106'–4"
85'–6"
20'–10"
18'–8"
13'–4"
20'–0"
13'–3"
20'–3"
24'–1"
7'–2"
52'–8"
59'–0"
107'–0"
48'–0"
27'–10"
12'–0"

New Addition
5,586 s.f.

AREA 'C' FLOOR PLAN
SCALE: 1/8" = 1'–0"

NEW KEY PLAN

202529

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RENOVATIONS AND ADDITONS TO
KENNETH HENDERSON MIDDLE SCHOOL
USD #457 GARDEN CITY SCHOOLS
2406 Flemming Street Garden City, Kansas

ARCHITECTS SEAL OF CHARLES M. GOODNIGHT, JAY KYLE MAHAFFEY, DAVID L. REED, TIMOTHY J. MCNEA, TERRY L. PATTON, AND DUSTIN J. ROESLER, ARCHITECTS OF GMCN, CHTD., A KANSAS CORPORATION, 115 E. LAUREL, GARDEN CITY, KS 67846. THESE DOCUMENTS ARE THE PROPERTY OF GMCN, CHTD., AND ARE NOT TO BE USED IN WHOLE OR IN PART, FOR ANY OTHER PROJECT, WITHOUT THE WRITTEN PERMISSION OF GMCN, CHTD. ALL RIGHTS RESERVED.

ISSUE:

NO.	DATE	DESCRIPTION

SHEET TITLE: AREA "C" FLOOR PLAN

DATE: OCTOBER 06, 2026

A1.3

Heavy Remodel Area
7,515 s.f.

Light Remodel Area
12,232 s.f.

GENERAL NOTES

1. DIMENSIONS INDICATED ARE TO FACE OF FINISH MATERIAL OF PARTITION OR WALL AND GRID LINES, UON
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9. INSTALL ALUM. METAL PLATE WALL PANELS (AMP-1) OVER EXISTING BRICK VENEER. SEE ELEVATIONS
10. STORM AIR INTAKE LOUVER

MATCH LINE AREA "D"

MATCH LINE AREA "B"

MATCH LINE AREA "B"

MATCH LINE AREA "A"

AREA 'B' FLOOR PLAN
SCALE: 1/8" = 1'-0"

NEW KEY PLAN

202529

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RENOVATIONS AND ADDITONS TO
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2406 Flemming Street Garden City, Kansas

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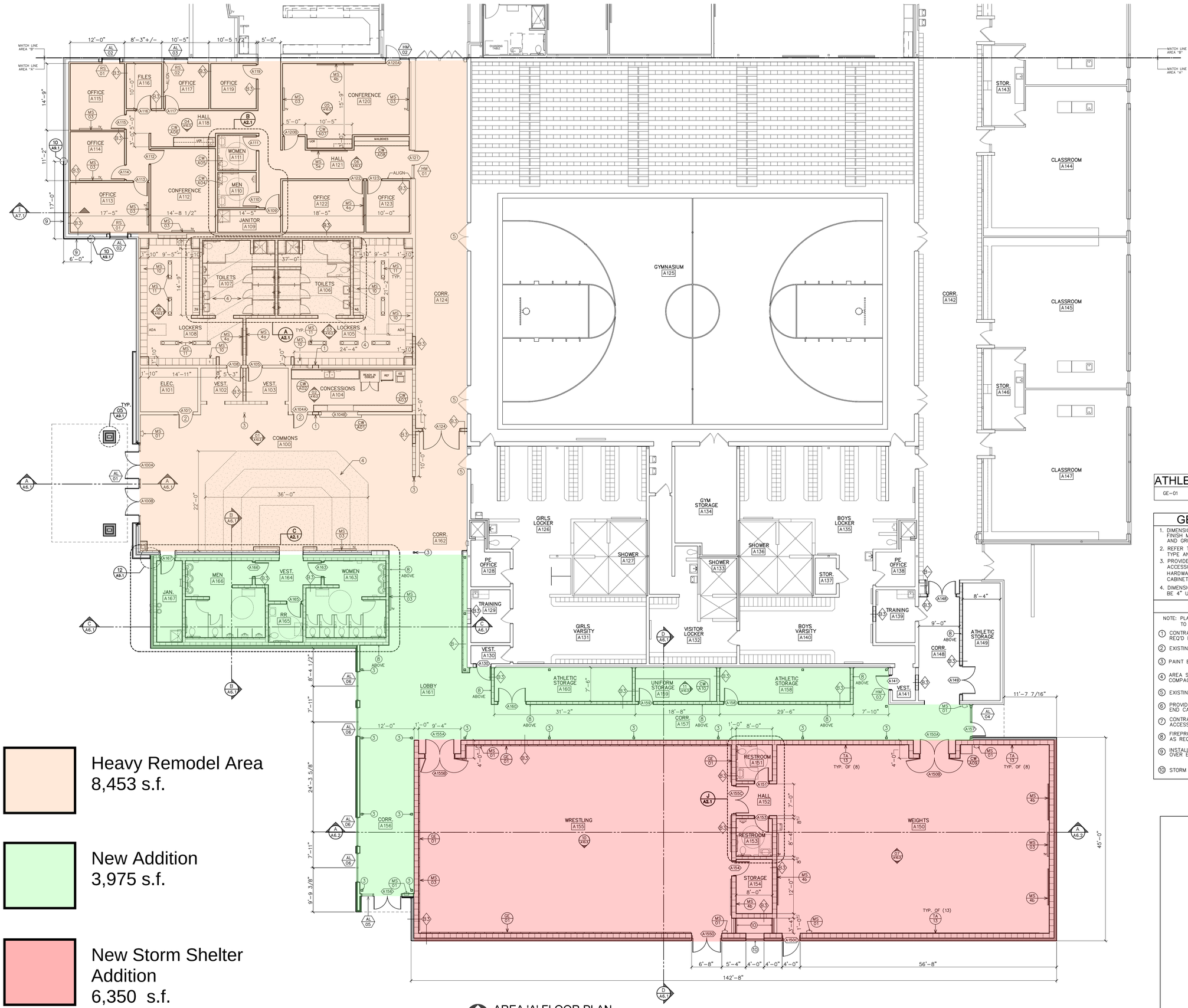
ISSUE:
NO. DATE DESCRIPTION

SHEET TITLE: AREA "B" FLOOR PLAN
DATE: OCTOBER 06, 2026

A1.2



Heavy Remodel Area
8,453 s.f.

New Addition
3,975 s.f.

New Storm Shelter Addition
6,350 s.f.

AREA 'A' FLOOR PLAN
SCALE: 1/8" = 1'-0"

ATHLETIC EQUIP. SCHEDULE

GE-01	WALL PADDING

GENERAL NOTES

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PLAN NOTES

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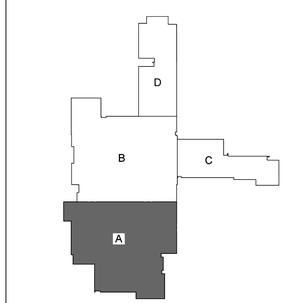
9. INSTALL ALUM. METAL PLATE WALL PANELS (AMP-1) OVER EXISTING BRICK VENEER. SEE ELEVATIONS
10. STORM AIR INTAKE LOUVER



NEW KEY PLAN

202529

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RENOVATIONS AND ADDITONS TO
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USD #457 GARDEN CITY SCHOOLS
2406 Flemming Street Garden City, Kansas

ARCHITECTURAL WORK VERIFICATION (AWV) SYSTEM REGISTERED ARCHITECTURAL WORK FOR THIS PROJECT, AWV SYSTEM NUMBER: [illegible]. THE ARCHITECT OF RECORD FOR THIS PROJECT IS GMCN ARCHITECTS, 115 E. LAUREL, GARDEN CITY, KS 67846. THE ARCHITECT OF RECORD IS RESPONSIBLE FOR THE PREPARATION OF THE DOCUMENTS SUBMITTED, AND FOR RESPONDING TO REVIEW COMMENTS RELATED TO THOSE DOCUMENTS.

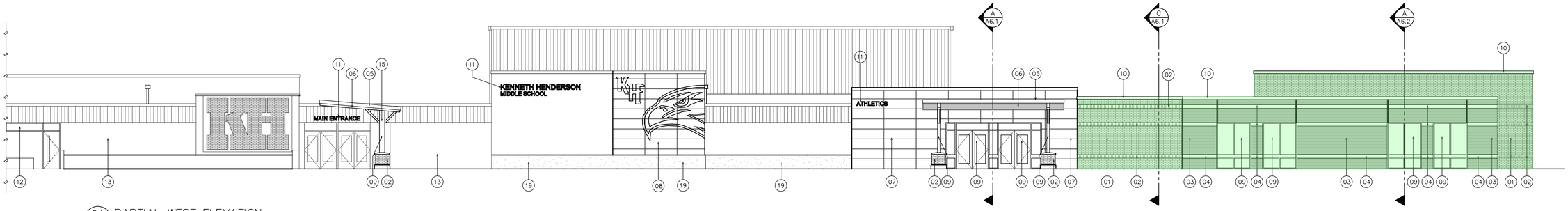
ISSUE:

NO.	DATE	DESCRIPTION

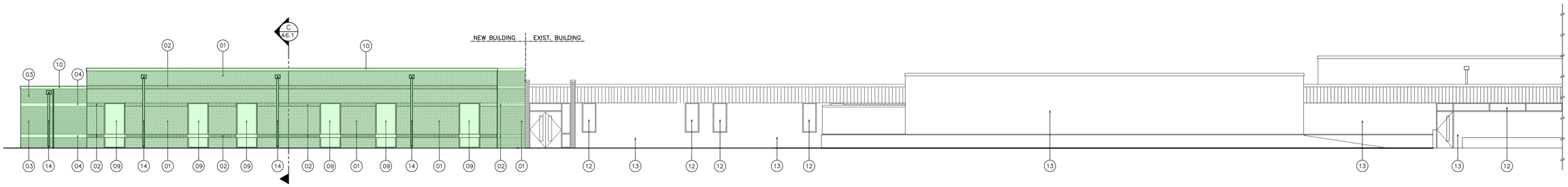
SHEET TITLE: AREA 'A' FLOOR PLAN

DATE: OCTOBER 06, 2026

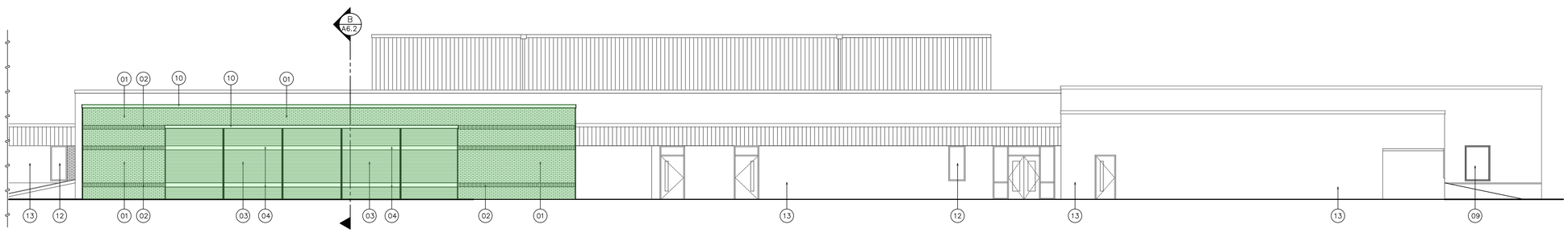
A1.1



01 PARTIAL WEST ELEVATION
SCALE: 1/8" = 1'-0"

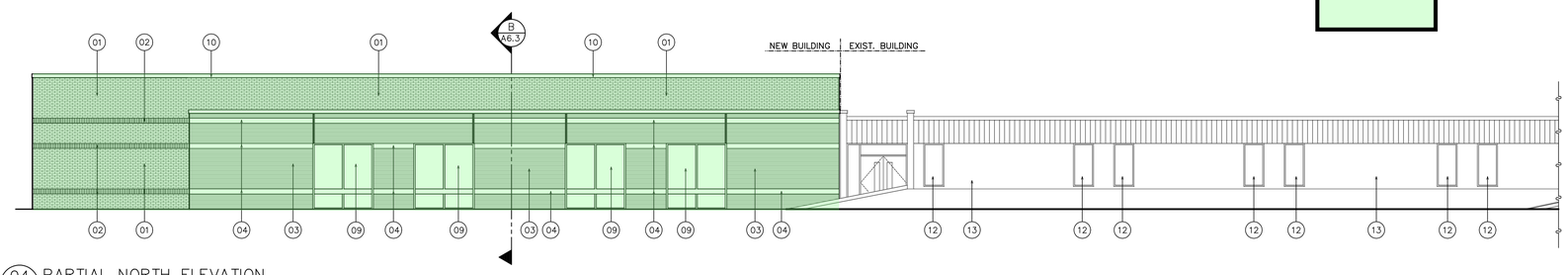


02 PARTIAL WEST ELEVATION
SCALE: 1/8" = 1'-0"



03 PARTIAL NORTH ELEVATION
SCALE: 1/8" = 1'-0"

New Additions



04 PARTIAL NORTH ELEVATION
SCALE: 1/8" = 1'-0"

EXTERIOR FINISH LEGEND

01 NEW BRICK VENEER
02 BRICK SOLDIER COURSE PER DETAIL 04/A9.1
03 METAL WALL PANELS. (MWP-1)
04 METAL WALL PANEL ACCCENT BAND (MWP-2)
05 METAL SOFFIT PANELS. (MWP-3)
06 STANDING SEAM METAL ROOFING
07 ALUMINUM METAL PLATE WALL PANELS (AMP-1) (COLOR #1)
08 ALUMINUM METAL PLATE WALL PANELS (AMP-1) (COLOR #2)
09 ALUMINUM FRAMED STOREFRONT
10 PRE-FINISHED METAL COPING
11 EXTERIOR BUILDING LETTERS MS-15
12 EXISTING ALUMINUM FRAMED WINDOW
13 EXISTING MASONRY VENEER
14 PRE-FINISHED METAL GUTTERS & DOWNSPOUTS
15 EXPOSED METAL COLUMNS/BEAMS (FIELD PAINT)
16 EXTERIOR HOLLOW METAL DOOR AND FRAME
17 NEW MECHANICAL GRILL
18 VINYL NUMBERS MS-16
19 SANDBLASGT EX. EXTERIOR CONCRETE WALL AND SKIMCOAT WITH EIFS TOPCOAT

202529

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ARCHITECTS ▪ PLANNERS
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RENOVATIONS AND ADDITONS TO
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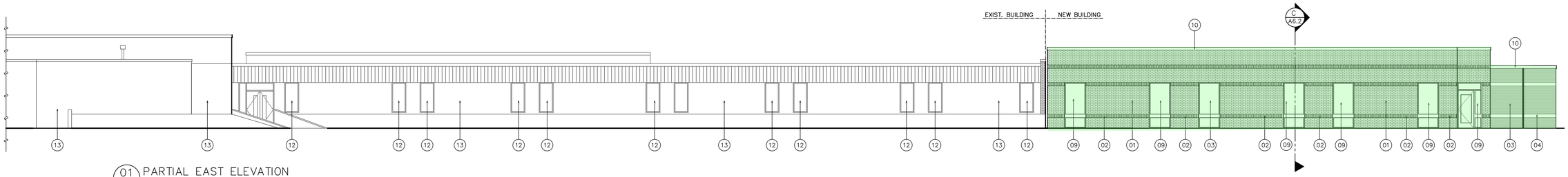
ISSUE:

NO.	DATE	DESCRIPTION

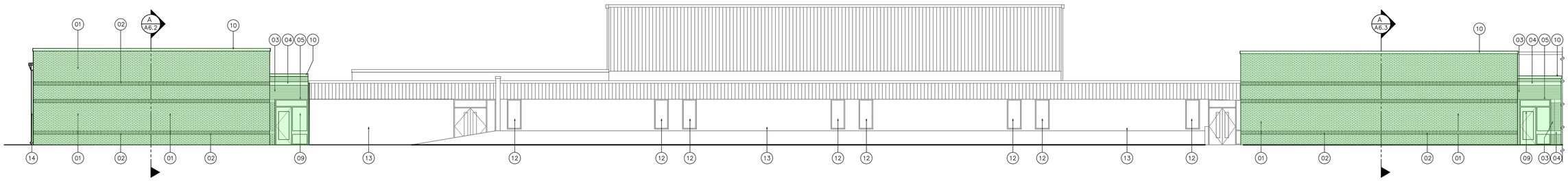
SHEET TITLE:
EXTERIOR ELEVATIONS

DATE:
OCTOBER 06, 2026

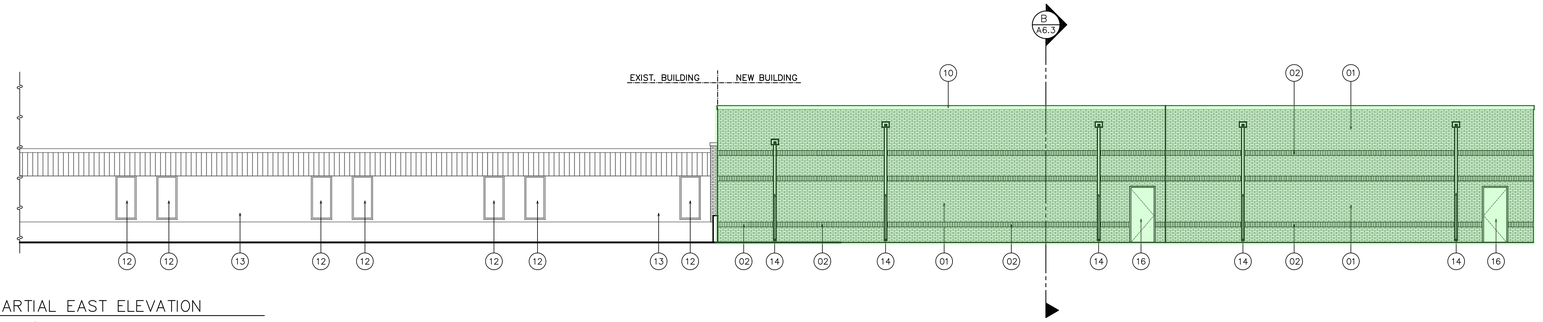
A5.1



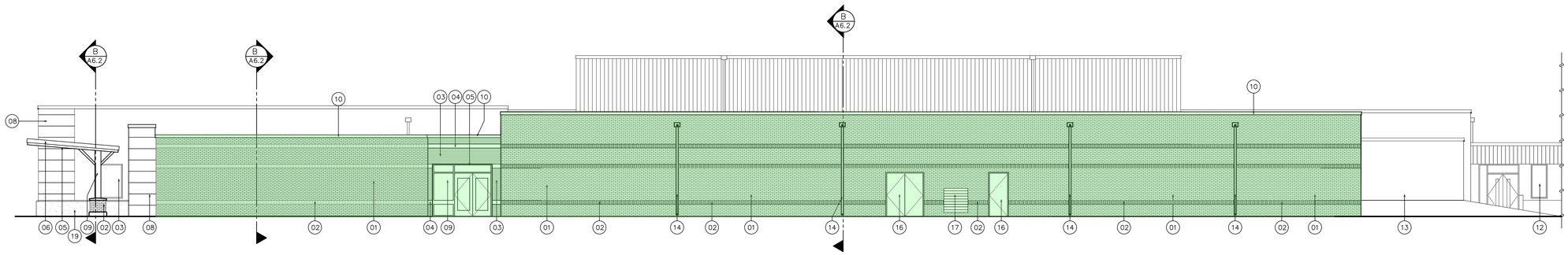
01 PARTIAL EAST ELEVATION
SCALE: 1/8" = 1'-0"



02 PARTIAL EAST ELEVATION
SCALE: 1/8" = 1'-0"



03 PARTIAL EAST ELEVATION
SCALE: 1/8" = 1'-0"



04 PARTIAL EAST ELEVATION
SCALE: 1/8" = 1'-0"

New Additions

EXTERIOR FINISH LEGEND

01	NEW BRICK VENEER
02	BRICK SOLDIER COURSE PER DETAIL 04/A9.1
03	METAL WALL PANELS. (MWP-1)
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05	METAL SOFFIT PANELS. (MWP-3)
06	STANDING SEAM METAL ROOFING
07	ALUMINUM METAL PLATE WALL PANELS (AMP-1) (COLOR #1)
08	ALUMINUM METAL PLATE WALL PANELS (AMP-1) (COLOR #2)
09	ALUMINUM FRAMED STOREFRONT
10	PRE-FINISHED METAL COPING
11	EXTERIOR BUILDING LETTERS MS-15
12	EXISTING ALUMINUM FRAMED WINDOW
13	EXISTING MASONRY VENEER
14	PRE-FINISHED METAL GUTTERS & DOWNSPOUTS
15	EXPOSED METAL COLUMNS/BEAMS (FIELD PAINT)
16	EXTERIOR HOLLOW METAL DOOR AND FRAME
17	NEW MECHANICAL GRILL
18	VINYL NUMBERS MS-16
19	SANDBLASGT EX. EXTERIOR CONCRETE WALL AND SKIMCOAT WITH EIFS TOPCOAT

202529

GMCN
ARCHITECTS • PLANNERS
115 E. LAUREL
GARDEN CITY, KS 67846
(620) 276-3244
www.gmcnarchitects.com

RENOVATIONS AND ADDITONS TO
KENNETH HENDERSON MIDDLE SCHOOL
USD #457 GARDEN CITY SCHOOLS
2406 Flemming Street Garden City, Kansas

ARCHITECT RETAINS ALL OWNERSHIP AND OTHER PROPERTY RIGHTS IN THESE PLANS. THEY PLANS AND DRAWINGS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY, WITHOUT FIRST OBTAINING SAID WRITTEN PERMISSION AND CONSENT OF ARCHITECT.

ISSUE:

NO.	DATE	DESCRIPTION

SHEET TITLE:
EXTERIOR ELEVATIONS

DATE:
OCTOBER 06, 2026

A5.2

PROPOSED WEST ELEVATION

KH Middle School
Expansion Phasing Plan

PHASE 1
January 2027- August 2027,

PHASE 2
March 2027- Dec. 31, 2027

PHASE 3
March 2027- March, 2028

PHASE 4
June 1, 2027- October 2027

PHASE 5
June 1, 2027-Dec. 31, 2027

PHASE 6
June 2027- August 2027

PHASE 7
June 2027- August 2027
or
June 2028- August 2028

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year Two Thousand Twenty-Six
(In words, indicate day, month and year.)

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

Unified School District No. 457, Finney County, Kansas (Garden City Public Schools), a Kansas unified school district
1205 Fleming Street
Garden City, KS 67846

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

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

Kenneth Henderson Middle School Expansion
2406 Fleming
Garden City, KS 67846

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

GMCN Architects, Inc.
115 E. Laurel St
Garden City, Kansas 67846

The Owner and Contractor agree as follows.

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Agreement.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ($), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price

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

Item	Units and Limitations	Price per Unit ($0.00)

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

The Owner will suffer financial loss that will be difficult if not impossible to ascertain if the Project is not substantially complete on or before the expiration of the Contract Time. The Contractor shall be liable for and shall pay to the Owner the sum of $350.00 as liquidated damages (and not as penalty) for each calendar day of delay from the expiration of the Contract Time until the Work is Substantially Complete.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

§ 5.1.3 Provided that a properly completed and undisputed Application for Payment is received by the Architect not later than the Twenty-Fifth day of a month, the Architect shall review, approve, and forward the undisputed amount to the Owner within seven (7) business days after receipt, and the Owner shall make payment of the amount certified to the Contractor within thirty (30) days after the Owner receives it or, if extenuating circumstances exist that preclude approval of payment within thirty (30) days, within forty-five (45) days after the Owner receives it, as provided in K.S.A. 16-1903(c) and (d). If an Application for Payment is received by the Architect after the application date fixed above, the same time periods shall apply, measured from the Architect's receipt of the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

- **.1** That portion of the Contract Sum properly allocable to completed Work;
- **.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 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 Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- **.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- **.5** Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 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:

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(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.)

Five percent (5%). The Owner may increase retainage to not more than ten percent (10%) if the Contractor fails to meet the terms of the Contract, is not performing according to schedule, or shows poor workmanship or other issues, as permitted by K.S.A. 16-1904(a) and (b).

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

In accordance with Kansas law, K.S.A. §16-1904.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

Up to one hundred fifty percent (150%) of the value of any incomplete Work, as determined by the Architect, where the incomplete Work is due to the fault of the Contractor, as permitted by K.S.A. 16-1904(c). Amounts withheld for incomplete Work shall be paid within forty-five (45) days after completion of that Work as part of the regular payment cycle.

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

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

§ 5.2 Final Payment

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

- **.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- **.2** a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the Architect issues the final Certificate for Payment in accordance with Section 9.10 of AIA Document A201–2017.

§ 5.3 Late Payment Fee

Payments due and unpaid under the Contract shall bear a late payment fee 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 late payment fee agreed upon, if any.)

18.00 % per annum

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ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this 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.)

§ 6.2 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 Section 15.4 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor 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 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

None. Upon termination for the Owner's convenience, the Contractor shall be paid only as provided in Section 14.4.3 of AIA Document A201–2017.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 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.

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

Brandon Anderson, Director of Plant Facilities
Unified School District No. 457, Finney County, Kansas
1205 Fleming Street
Garden City, KS 67846
940-521-2301
banderson1@gckschools.com

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

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

§ 8.5 Insurance and Bonds
§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, 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.)

Notices may be given by email to the Owner's and Contractor's representatives at the email addresses identified in Sections 8.2 and 8.3. Notice of a Claim shall also be delivered as provided in Section 1.6.2 of AIA Document A201–2017, and notice of default, termination, or suspension shall also be delivered by certified mail or by courier providing proof of delivery.

§ 8.7 Other provisions:

8.7.1 Changes to the Work
A. When Architect establishes that the method of valuation for Changes in the Work will be net cost plus a percentage fee in accordance with General Conditions, our percentage fee will be:
a. To Contractor for Work performed by his own forces % O & P
b. To Contractor for Work performed by other than his own forces % O & P
c. To Subcontractor for Work performed by his own forces % O & P
d. To Subcontractor for Work performed by other than own forces % O & P
Percentages for overhead and profit will not be allowed on bond premiums.
B. On work deleted from the Contract, our credit to Owner shall be Architect-approved net cost plus (0%) of the overhead and profit percentage noted above.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS
§ 9.1 This Agreement is comprised of the following documents:

- **.1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- **.2** AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- **.3** AIA Document A201™–2017, General Conditions of the Contract for Construction
- **.4** Building information modeling exhibit, dated as indicated below:
  (Insert the date of the building information modeling exhibit incorporated into this Agreement.)

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.5 Drawings

Number	Title	Date

.6 Specifications

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

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

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

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 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 Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

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OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)

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AIA® Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the day of in the year Two Thousand Twenty-Six
(In words, indicate day, month and year.)

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

Kenneth Henderson Middle School Expansion
2406 Fleming Street
Garden City, Kansas 67846

THE OWNER:
(Name, legal status and address)

Unified School District No. 457, Finney County, Kansas (Garden City Public Schools), a Kansas unified school district
1205 Fleming Street
Garden City, Kansas 67846

THE CONTRACTOR:
(Name, legal status and address)

TABLE OF ARTICLES

A.1 GENERAL

A.2 OWNER'S INSURANCE

A.3 CONTRACTOR'S INSURANCE AND BONDS

A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

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

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's

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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®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

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request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

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

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.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 A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

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

Causes of Loss	Sub-Limit

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to 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 Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit

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

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

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

§ A.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

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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 A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.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.)

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.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.

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§ A.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.)

[ ] **§ A.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.)

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

Coverage	Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

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

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

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Owner's board members, officers, and employees, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and the Owner's board members, officers, and employees as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the 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.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor 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 Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

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§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million ($ 1,000,000.00) each occurrence, two million ($ 2,000,000.00) general aggregate, and two million ($ 2,000,000.00) 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 Contractor's indemnity obligations under Section 3.18 of the General Conditions.

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

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

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million ($ 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.

§ A.3.2.4 The Contractor 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 A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than five hundred thousand ($ 500,000.00) each accident, five hundred thousand ($ 500,000.00) each employee, and five hundred thousand ($ 500,000.00) policy limit.

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

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§ A.3.2.8

§ A.3.2.9

§ A.3.2.10

§ A.3.2.11

§ A.3.2.12

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.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 Contractor 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 Contractor 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.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor 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.)

[ ] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor 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 Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.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.)

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.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.

[ ] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned

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by the Contractor and used on the Project, including scaffolding and other equipment.

[ ] **§ A.3.3.2.6 Other Insurance**

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

Coverage	Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor 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	100% of Contract Sum
Performance Bond	100% of Contract Sum

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 A.4 SPECIAL TERMS AND CONDITIONS

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

.1 Umbrella or Excess Liability. In addition to the coverages required by Section A.3.2, the Contractor shall maintain umbrella or excess liability insurance, following form over the Commercial General Liability, Automobile Liability, and Employers' Liability coverages, with limits of not less than Five Million Dollars ($5,000,000.00) each occurrence and in the aggregate.

.2 Insurer Rating. All insurance required of the Contractor shall be written by insurers with an A.M. Best rating of A-VII or better, unless otherwise approved in writing by the Owner.

.3 Subcontractor Insurance. The Contractor shall require each Subcontractor to maintain commercial general liability, automobile liability, workers' compensation, and employers' liability insurance with limits appropriate to the Subcontractor's work, with the Owner included as an additional insured on the Subcontractor's commercial general liability policy, and shall obtain certificates of insurance from each Subcontractor before it begins work at the site.

.4 Certificates. Certificates of insurance shall identify the Owner as Unified School District No. 457, Finney County, Kansas. Neither the Contractor's failure to furnish certificates nor the Owner's failure to request or object to them shall waive the Contractor's obligation to maintain the insurance required by the Contract Documents.

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DRAFT

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

«Kenneth Henderson Middle School Expansion
2406 Fleming
Garden City, KS 67846»
«»

THE OWNER:
(Name, legal status and address)

«Unified School District No. 457, Finney County, Kansas (Garden City Public Schools)
1205 Fleming Street
Garden City, KS 67846»« »
«»

THE ARCHITECT:
(Name, legal status and address)

«GMCN Architects, Inc. »« »
«115 E. Laurel St.
Garden City, Kansas 67846»

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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.

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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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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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 Contractor 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.

§ 1.1.9 FINAL COMPLETION AND FINAL ACCEPTANCE

Final Completion and *Final Acceptance* is the date the Contract has been fully performed, all the Work has been completed, Contractor has submitted, and Owner has accepted the Project close-out documents (see § 9.10.2), and a final Certificate for Payment approved by the Owner has been issued by the Architect.

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§ 1.1.10 APPROVED EQUALS

Or Approved Equal and *Equal to* shall mean products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution and prove to be equal to those specified in the Contract Documents, and which may be incorporated in the Work after review and acceptance by the Architect and acceptance by the Owner.

§ 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. Furthermore, by executing this Contract the Contractor represents that they have had ample opportunity to identify the issues associated with the Work.

The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work and include all Work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with all applicable laws, codes and professional standards.

Should the Drawings and Specifications appear to be in disagreement with each other relative to the quality or quantity of Work required, the better quality and/or the greater quantity shall govern, and shall be provided, unless instructions are otherwise furnished to the Contractor by the Architect in writing.

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

§ 1.2.1.2 Drawings, specifications and other Contract Documents are not intended as "shop drawings" or extensively detailed documents. They are intended to indicate general design concept of the Project in sufficient detail that all work required is reasonably inferable therefrom. Contractor shall provide all work thus indicated or reasonably inferred as necessary to produce the intended results of a complete, structurally-sound, aesthetically-desirable, durable, properly-performing work of quality. Should conflict occur between drawings and specifications, Contractor shall provide the more expensive method or material, unless it has obtained from the Architect a written decision on the conflict prior to submitting its bid.

§ 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.

§ 1.2.4 The order of precedence, in descending order, for Contract Documents shall be: the Owner-Contractor Agreement (including Modifications), Addenda (later Addenda governing over earlier Addenda), Supplementary and other Conditions, these General Conditions, Specifications, and Drawings (large-scale governing over small-scale, and figured dimensions governing over scaled dimensions). Notwithstanding this order of precedence, where the Drawings and Specifications conflict as to the quality or quantity of Work, Section 1.2.1 shall govern.

§ 1.2.5 When more than one material, brand, or process is specified for a particular item of Work, the choice shall be the Contractor's. Contractor may select the one it considers to be the best. Approval by the Architect or Owner of materials, suppliers, processes, or Subcontractors does not imply a waiver of any contract requirements including, without limitation, Contractor's warranty. When one or more materials are in conflict with one another, the better quality and greater quantity shall apply.

§ 1.2.6 All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by Owner.

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§ 1.2.7 The Contractor acknowledges and declares that it has visited and examined the site, examined all physical and other conditions affecting the Work, and is fully familiar with all the conditions on the site and affecting the Work. Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to (1) the nature, location, and character of the Project and the site, including the surface and subsurface conditions, both natural and man-made; (2) the nature, location, and character of the general area in which the Project is located, including its climatic conditions, available labor supply and labor costs, and available equipment supply and costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

§ 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

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.

§ 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 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, 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.

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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 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.

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§ 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 where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

§ 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.

§ 3.3.4 Contractor acknowledges that the Owner may elect to employ a full-time representative to assist the Owner during the construction phase of the project, which representative, if hired, will be hired at the Owner's expense. The Contractor shall cooperate with any such Owner's representative at all times.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 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.

§ 3.4.4 Work at an Occupied School Facility. The Contractor acknowledges that the Work will be performed at or adjacent to an occupied school facility where students, staff, and members of the public are present. The Contractor shall, and shall require its Subcontractors and Sub-subcontractors to, (1) comply with the Owner's policies governing persons on District property, including policies prohibiting the use or possession of tobacco and nicotine products, alcohol, illegal drugs, and weapons, and prohibiting harassment and inappropriate language or conduct; (2) keep construction areas, materials, and equipment separated from occupied areas by barriers and access controls acceptable to the Owner; (3) not permit its personnel to have unsupervised contact with students or to enter occupied areas of the building except as coordinated with and approved by the Owner; (4) require its personnel to wear visible company identification while on the site; and (5) not assign to the Project any person who is required to register under the Kansas Offender Registration Act, K.S.A. 22-4901 et seq. The Owner may require the Contractor to remove from the Project any person whose conduct the Owner reasonably determines to be inappropriate or a risk to the safety of students or staff, and the Contractor shall promptly comply.

§ 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.

§ 3.5.3 Neither Final Acceptance, payment, nor any provisions in drawings or specifications shall relieve Contractor of his responsibilities under this warranty. Contractor shall extend to Owner any provisions of warranties of subcontractors or materialmen more favorable than this warranty and shall provide Owner copies of all such warranties.

§ 3.5.4 Contractor shall warrant the entire Work for a period of one year, beginning from the date of Substantial Completion. Unless otherwise specified and irrespective of time limitations stated in any manufacturer's warranty or guarantee, all subcontractor and supplier warranties and guarantees shall begin with the date of Substantial Completion of the Project.

§ 3.5.5 Contractor shall receive, complete, and register or file all manufacturer product guarantees. Certificates of warranty/guarantee registration shall be included with the Record Documents submitted to Owner upon completion of the Work. The Owner shall administer manufacturers' warranties/guarantees after expiration of the Contractor's warranty.

§ 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. Notwithstanding the foregoing, the Owner is exempt from Kansas sales and compensating use tax under K.S.A. 79-3606(c) and (d). The Owner will obtain from the Kansas Department of Revenue and furnish to the Contractor a Project Exemption Certificate for the Project, and the Contractor shall not include in the Contract Sum Kansas sales or compensating use tax on materials, labor, and services eligible for exemption under that certificate.

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The Contractor shall use the Project Exemption Certificate solely for purchases incorporated into the Project, shall furnish copies to its Subcontractors and suppliers for the same limited use, and upon completion of the Work shall furnish the sworn statement required by the Kansas Department of Revenue. The exemption does not apply to construction machinery, equipment, or tools purchased or rented by the Contractor. The Contractor shall bear any tax, penalty, or interest resulting from misuse of the Project Exemption Certificate by the Contractor or anyone for whom the Contractor is responsible.

§ 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.

§ 3.7.1.1 Contractor shall give notices to utility companies, municipalities and others required to make installations in ample time for them to complete such installations and not delay the project, whether such installations are under this contract or reasonably inferable as necessary for completion of this project, or are noted to be furnished by others.

§ 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. The Contractor is responsible for recovering any time lost because of defective work.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor, Owner or Architect 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 observing party shall promptly provide notice to the others 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,

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.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 must have a minimum of five (5) years of commercial construction experience in similar type(s) of construction. 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. The Owner shall have the right to require the Contractor to remove any Superintendent from the Project whose performance is not satisfactory to the Owner and to replace such Superintendent with a Superintendent who is satisfactory to the Owner.

§ 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.

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§ 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. The Contractor shall stamp all shop drawings with an approval stamp, verifying that the drawings have been checked by him prior to sending such shop drawings to Architect. Equipment, materials, etc., not meeting construction document requirements shall be returned to the supplier for corrections before they are submitted to the Architect and/or Engineer. Shop drawings which do not bear Contractor's approval stamp may be returned with no action taken.

§ 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.

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§ 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. The Contractor shall remove and shall require its Subcontractors to remove all spillage and tracking resulting from the performance of the Work from streets, drives, and sidewalks in and around the Project site and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. The Contractor shall remove all debris from the Project site and will transport it to a disposal site authorized to accept such debris. The Contractor shall remove all debris, mud, or deleterious material deposited on the public streets at the end of each working day.

§ 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

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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, the Owner's board members, officers, and employees, 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 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.

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§ 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.

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§ 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. The Contractor shall not subcontract work to anyone with whom Owner has a reasonable objection. Owner's assent to any Contractor employee, Subcontractor, or vendor shall not constitute a waiver of any right of Owner to reject defective Work.

§ 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-

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subcontractors. In the event of a conflict between the "prime" and any "sub" contracts, the "prime" contract shall govern.

§ 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

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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 not 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, except to the extent caused by the Owner's own acts or omissions. The Contractor shall be entitled to an equitable extension of the Contract Time for such delays and shall seek recovery of such costs directly from the responsible Separate Contractor. Each Separate Contractor on the Project shall be bound by a provision substantially identical to this Section 6.2.3, and the Contractor and each Separate Contractor are intended third-party beneficiaries of one another's obligations under this Section 6.2.3 and Section 6.2.4 for the limited purpose of recovering such costs.

§ 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.

A Change Order signed by the Contractor indicates its agreement with it, including the adjustment in the Contract Price and the Contract Time, and that no other dollars or time are due as a result of the Change Order. Contractor shall review that Change Order for cumulative effects and by executing a written Change Order agrees no additional dollars or time are due as a result of the Change Order.

§ 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.

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§ 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

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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.

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§ 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)

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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 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.
- **.8** any other cause for which the Owner or Architect reasonably deems the Owner to be exposed to a loss.

§ 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.

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§ 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 business days after receipt of the Contractor's properly completed, undisputed Application for Payment, or if the Owner does not pay the Contractor within seven business days after the date established in the Contract Documents, the undisputed amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional business days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing, including applicable interest, has been received, as provided in K.S.A. 16-1905. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of demobilization, delay, and remobilization.

§ 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. Owner and Contractor agree the Project will not be substantially complete until all required close-out documents (see § 9.10.2) have been received and accepted by the Owner.

§ 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 the Architect's punch list. In such case, the Contractor shall then submit with at least 7 days advance notice, a request for another inspection by the Architect to determine Substantial Completion.

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§ 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, (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 and (7) other contractually-required documents, including but not limited to as-built drawings (set of red-line drawings); 3 sets of operating and maintenance manuals; completed warranty forms; building permit and certificates of occupancy; and test and balance reports. 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

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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

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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 The Owner does not agree to indemnify or hold harmless the Contractor or any other person or entity. The Owner's responsibility, if any, for claims, damages, losses, and expenses arising out of performance of the Work in the affected area, where the material or substance presents the risk of bodily injury or death described in Section 10.3.1 and has not been rendered harmless, shall be as provided by Kansas law, except to the extent such claim, damage, loss, or expense is due to the fault or negligence of the party seeking recovery.

§ 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.

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§ 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, the Owner's board members, officers, and employees, 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

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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 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.

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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, whether discovered before or after 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. If the Owner or Architect decide it is necessary, at any time before acceptance of the entire Work, to make an examination of work already completed, by removing or tearing out that work, the Contractor shall promptly furnish all necessary facilities, labor and material. If the work in question is found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors, it shall pay all the expenses of the examination and of satisfactory reconstruction, without adding additional time to the Project schedule. If however, the work is found to meet the requirements of the Contract Documents, an equitable adjustment shall be made (i) in the Contract Sum to compensate Contractor for the additional work involved in such examination and reconstruction; and (ii) in the Contract Time, if and to the extent the examination and reconstruction delay the critical path.

§ 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. Corrective work shall be warranted to be free from defects for a period equal to the longer of twelve (12) months after the completion of the corrective work, or (1) year after the start of Contractor's warranty, or such longer period as may be provided by any applicable special warranty required by the Contract Documents. Any defect in corrective work shall be corrected again by Contractor promptly upon notice of the defect from the Owner. This obligation shall survive acceptance of the Work or termination of the contract.

§ 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.

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§ 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 laws of the State of Kansas. Venue for any action arising out of or relating to the Contract shall be in the District Court of Finney County, Kansas. Nothing in the Contract Documents shall be construed to require the Owner to indemnify any person or entity, to incur any obligation in violation of the Kansas Cash-Basis Law, K.S.A. 10-1101 et seq., or the Kansas Budget Law, K.S.A. 79-2925 et seq., or to waive any immunity or limitation of liability available to the Owner under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq.

§ 13.1.1 The Historical lack of enforcement of any local law or code shall not constitute a waiver of the Contractor's responsibility for compliance with that law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of compliance from both the Owner and the agency having jurisdiction over the Project.

§ 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.

§ 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. Any such rights and remedies shall survive acceptance of the Work and/or termination of the contract.

§ 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

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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.

§ 13.6 Kansas Open Records Act

The Contractor acknowledges that the Owner is subject to the Kansas Open Records Act, K.S.A. 45-215 et seq., and that the Contract Documents and records the Contractor submits to the Owner may be subject to public disclosure under that Act.

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, including reasonable overhead and profit on Work executed, and costs incurred by reason of such termination.

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§ 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, 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.

§ 14.2.5 Upon a determination by binding dispute resolution that the Owner's termination of the Contractor was wrongful, such termination will be deemed converted to a termination for convenience, and Contractor's remedy shall be limited to the recovery of the payments permitted for a termination for convenience.

§ 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;

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.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.

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§ 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 critical path activities of 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 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.

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§ 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 by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 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.

§ 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.

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§ 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.

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DRAFT

AIA® Document A701™ – 2018

Instructions to Bidders

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

«Kenneth Henderson Middle School Expansion »
«2406 Fleming Street»
«Garden City, Kansas 67846 »

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

«Unified School District No. 457, Finney County, Kansas (Garden City Public Schools)»« »
«1205 Fleming Street»
«Garden City, Kansas 67846»
«»

THE ARCHITECT:
(Name, legal status, address, and other information)

«GMCN Architects, Inc.»« »
«115 E. Laurel St.»
«Garden City, Kansas 67846»
« »

TABLE OF ARTICLES

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8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

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

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

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G612™–2017, Owner's Instructions to the Architect, Parts A and B will be completed prior to using this document.

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ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement's Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda, and all other documents enumerated in Article 8 of these Instructions.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, or in other Proposed Contract Documents apply to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect, which, by additions, deletions, clarifications, or corrections, modify or interpret the Bidding Documents.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, to which Work may be added or deleted by sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or a portion of the Work, as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 By submitting a Bid, the Bidder represents that:

- **.1** the Bidder has read and understands the Bidding Documents;
- **.2** the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
- **.3** the Bid complies with the Bidding Documents;
- **.4** the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's observations with the requirements of the Proposed Contract Documents;
  - **.1** The bidder has investigated all required fees, permits, and regulatory requirements of authorities having jurisdiction and has properly included in the submitted bid the cost of such fees, permits, and requirements not otherwise indicated as provided by Owner.
- **.5** the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
- **.6** the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.
- .7 The Bidder is a properly licensed Contractor according to the laws and regulations of the State of Kansas and meets qualifications indicated in the Procurement and Contracting Documents.
- .8 The Bidder has incorporated into the Bid adequate sums for work performed by installers whose qualifications meet those indicated in the Procurement and Contracting Documents.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 Distribution

§ 3.1.1 Bidders shall obtain complete Bidding Documents, as indicated below, from the issuing office designated in the advertisement or invitation to bid, for the deposit sum, if any, stated therein.

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(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall obtain Bidding Documents.)

« »

§ 3.1.2 Any required deposit shall be refunded to Bidders who submit a bona fide Bid and return the paper Bidding Documents in good condition within ten days after receipt of Bids. The cost to replace missing or damaged paper documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the paper Bidding Documents, and the Bidder's deposit will be refunded.

§ 3.1.3 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

§ 3.1.4 Bidders shall use complete Bidding Documents in preparing Bids. Neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete Bidding Documents.

§ 3.1.5 The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

§ 3.2 Modification or Interpretation of Bidding Documents

§ 3.2.1 The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Architect of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

§ 3.2.2 Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing and shall be received by the Architect at least seven days prior to the date for receipt of Bids.
(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)

«3.2.2.1 Submit Bidder's Request for Interpretation using form furnished with electronic bid forms and submitted via email. »

§ 3.2.3 Modifications and interpretations of the Bidding Documents shall be made by Addendum. Modifications and interpretations of the Bidding Documents made in any other manner shall not be binding, and Bidders shall not rely upon them.

§ 3.3 Substitutions

§ 3.3.1 The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.

§ 3.3.2 Substitution Process

§ 3.3.2.1 Written requests for substitutions shall be received by the Architect at least ten days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

§ 3.3.2.2 Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

§ 3.3.2.3 If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.

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§ 3.3.3 The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.4 If the Architect approves a proposed substitution prior to receipt of Bids, such approval shall be set forth in an Addendum. Approvals made in any other manner shall not be binding, and Bidders shall not rely upon them.

§ 3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to Bidders known by the issuing office to have received complete Bidding Documents.
(Indicate how, such as by email, website, host site/platform, paper copy, or other method Addenda will be transmitted.)

« »

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids or postponing the date for receipt of Bids, which may be issued at any time prior to the date for receipt of Bids.

§ 3.4.4 Prior to submitting a Bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

§ 3.4.4.1 Owner may elect to waive the requirement for acknowledging receipt of 3.4.4 Addenda as follows:

.1 Information received as part of the Bid indicates that the Bid, as submitted, reflects modifications to the Procurement and Contracting Documents included in an unacknowledged Addendum.

.2 Modifications to the Procurement and Contracting Documents in an unacknowledged Addendum do not, in the opinion of Owner, affect the Contract Sum or Contract Time.

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with or identified in the Bidding Documents.

.1 Printable electronic Bid Forms and related documents are available from the Architect.

§ 4.1.2 All blanks on the bid form shall be legibly executed. Paper bid forms shall be executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Edits to entries made on paper bid forms must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change" or as required by the bid form.

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall neither make additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the

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Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

§ 4.1.9 The Bid may include unit prices when called for by the Procurement and Contracting Documents. Owner may elect to consider unit prices in determination of award. Unit prices will be incorporated into the Contract.

§ 4.1.10 Owner may elect to disqualify a bid due to failure to submit a bid in the form requested, failure to bid request alternates or unit prices, failure to complete entries in all blanks in the Bid Form, or inclusion by the Bidder of any alternates, conditions, limitations, or provisions not called for.

§ 4.1.11 Bids shall **NOT** include sales and use taxes.

§ 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by the following bid security:
(Insert the form and amount of bid security.)

«A bid bond on AIA Document A310, or a certified check or cashier's check payable to the Owner, in an amount not less than five percent (5%) of the Base Bid.»

§ 4.2.2 The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and shall, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. In the event the Owner fails to comply with Section 6.2, the amount of the bid security shall not be forfeited to the Owner.

§ 4.2.3 If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 4.2.4 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning« sixty (60) »days after the opening of Bids, withdraw its Bid and request the return of its bid security.

§ 4.3 Submission of Bids

§ 4.3.1 A Bidder shall submit its Bid as indicated below:
(Indicate how, such as by website, host site/platform, paper copy, or other method Bidders shall submit their Bid.)

« »

§ 4.3.2 Paper copies of the Bid, the bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address, and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

.1 Include Bidder's Contractor License Number applicable in Project jurisdiction on the face of the sealed bid envelope.

§ 4.3.3 Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

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§ 4.3.4 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.5 A Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

§ 4.4 Modification or Withdrawal of Bid

§ 4.4.1 Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

.1 Such modifications to or withdrawal of a bid may only be made by persons authorized to act on behalf of the Bidder. Authorized persons are those so identified in the Bidder's corporate bylaws, specifically empowered by the Bidder's charter or similar legally binding document acceptable to Owner, or by a power of attorney, signed and dated, describing the scope and limitations of the power of attorney. Make such documentation available to the Owner at the time of seeking modifications or withdrawal of the Bid.

§ 4.4.2 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

§ 4.4.3 After the date and time designated for receipt of Bids, a Bidder who discovers that it made a clerical error in its Bid shall notify the Architect of such error within two days, or pursuant to a timeframe specified by the law of the jurisdiction where the Project is located, requesting withdrawal of its Bid. Upon providing evidence of such error to the reasonable satisfaction of the Architect, the Bid shall be withdrawn and not resubmitted. If a Bid is withdrawn pursuant to this Section 4.4.3, the bid security will be attended to as follows:
(State the terms and conditions, such as Bid rank, for returning or retaining the bid security.)

«The bid security of a Bidder whose Bid is withdrawn under this Section 4.4.3 will be returned, and that Bidder may not resubmit a Bid for the Work.»

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 Opening of Bids

If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud. A summary of the Bids may be made available to Bidders.

§ 5.2 Rejection of Bids

Unless otherwise prohibited by law, the Owner shall have the right to reject any or all Bids.

§ 5.2.1 Owner reserves the right to reject a bid based on Owner's and Architect's evaluation of qualification information submitted following opening of bids. Owner's evaluation of the Bidder's qualifications will include: status of licensure and record of compliance with licensing requirements, record of quality of completed work, record of Project completion and ability to complete, record of financial management including financial resources available to complete Project and record of timely payment of obligations, record of Project site management including compliance with requirements of authorities having jurisdiction, record of and number of current claims and disputes and the status of their resolution, and qualifications of the Bidder's proposed Project staff and proposed subcontractors.

§ 5.3 Acceptance of Bid (Award)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. Unless otherwise prohibited by law, the Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's best interests.

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§ 5.3.2 Unless otherwise prohibited by law, the Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 Contractor's Qualification Statement

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request and within the timeframe specified by the Architect, a properly executed AIA Document A305™, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted for this Bid.

§ 6.2 Owner's Financial Capability

A Bidder to whom award of a Contract is under consideration may request in writing, fourteen days prior to the expiration of the time for withdrawal of Bids, that the Owner furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. The Owner shall then furnish such reasonable evidence to the Bidder no later than seven days prior to the expiration of the time for withdrawal of Bids. Unless such reasonable evidence is furnished within the allotted time, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

§ 6.3 Submittals

§ 6.3.1 After notification of selection for the award of the Contract, the Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, submit in writing to the Owner through the Architect:

.1 a designation of the Work to be performed with the Bidder's own forces;

.2 names of the principal products and systems proposed for the Work and the manufacturers and suppliers of each; and

.3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

.4 Submit information requested in Sections 6.3.1.1, 6.3.1.2, and 6.3.1.3 no later than two business days following Architect's request.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 Bond Requirements

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

.1 Both a Performance Bond and a Payment Bond will be required, each in an amount equal to 100 percent of the Contract Sum.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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§ 7.1.4 Unless otherwise indicated below, the Penal Sum of the Payment and Performance Bonds shall be the amount of the Contract Sum.
(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)

« »

§ 7.2 Time of Delivery and Form of Bonds

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than ten days after the date of Notice of Intent to Award and no later than the date of execution of the Contract, whichever occurs first. Owner may deem the failure of the Bidder to deliver required bonds within the period of time allowed a default. If the Work is to commence sooner in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond.

§ 7.2.3 Bonds shall be executed and be in force on the date of the execution of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bond a certified and current copy of the power of attorney.

ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

§ 8.1 Copies of the proposed Contract Documents have been made available to the Bidder and consist of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.
(Insert the complete AIA Document number, including year, and Document title.)

«AIA Document A101–2017, as modified for this Project and included in the Bidding Documents.»

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds, unless otherwise stated below.
(Insert the complete AIA Document number, including year, and Document title.)

«AIA Document A101–2017, Exhibit A, Insurance and Bonds, as modified for this Project and included in the Bidding Documents.»

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction, unless otherwise stated below.
(Insert the complete AIA Document number, including year, and Document title.)

«AIA Document A201–2017, General Conditions of the Contract for Construction, as modified for this Project and included in the Bidding Documents.»

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013.)

« »

.5 Drawings

Number	Title	Date
T1.1	TITLE SHEET	August 9, 2023
S1.1	PARTIAL ROOF FRAMING PLANS, STRUCTURAL NOTES & DETAILS	

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S4.1	SECTIONS AND DETAILS
MP0.1	MECHANICAL DESIGN CRITERIA & SCHEDULES
MP1.1	MECHANICAL DETAILS
MP2.1	MECHANICAL CONTROLS
MP3.1	MECHANICAL SPECIFICATIONS
MD1.1	DEMO MECHANICAL HVAC PLAN
MD1.2	MECHANICAL DEMO ROOF HVAC PLAN
M1.1	MECHANICAL HVAC PLAN
M1.2	MECHANICAL HVAC ROOF PLAN
M2.1	MECHANICAL SECTIONS
E1.1	ELECTRICAL SCHEDULES
E1.2	ELECTRICAL SPECIFICATIONS
E1.3	ELECTRICAL SPECIFICATIONS
E1.4	ELECTRICAL SPECIFICATIONS
ED2.1	FIRST FLOOR – ELECTRICAL DEMO PLAN
ED2.2	UPPER LEVEL – ELECTRICAL DEMO PLAN
ED2.3	ROOF LEVEL – ELECTRICAL DEMO PLAN
E2.1	FIRST FLOOR – POWER & SPECIAL SYSTEMS PLAN
E2.2	UPPER LEVEL – POWER & SPECIAL SYSTEMS PLAN
E2.3	ROOF – POWER & SPECIAL SYSTEMS PLAN

.6 Specifications

Section	Title
00 01 01	PROJECT TITLE PAGE

.7 Addenda:

Number	Date	Pages

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

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents listed below:
(List here any additional documents that are intended to form part of the Proposed Contract Documents.)

« »

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ARTICLE 9 EXECUTION OF THE CONTRACT

§ 9.1 Subsequent to the Notice of Intent to Award, and within 10 days after the prescribed Form of Agreement is presented to the Awardee for signature, the Awardee shall execute and deliver the Agreement to Owner through Architect, in such number of counterparts as Owner may require.

§ 9.2 Owner may deem as a default the failure of the Awardee to execute the Contract and to supply the required bonds when the Agreement is presented for signature within the period of time allowed.

§ 9.3 Unless otherwise indicated in the Procurement and Contracting Documents or the executed Agreement, the date of commencement of the Work shall be the date of the executed Agreement or the date that the Bidder is obligated to deliver the executed Agreement and required bonds to Owner.

§ 9.4 In the event of a default, Owner may declare the amount of the Bid security forfeited and elect to either award the Contract to the next responsible bidder or re-advertise for bids.

DRAFT

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MEMORANDUM

TO: Board of Education
THRU: Josh Guymon, Superintendent
FROM: Shane Burns, Director of Transportation
DATE: 10/6/2026
RE: Purchase of One (1) Activity Bus

ISSUE:

The Board of Education is asked to approve the purchase of an activity bus from National Bus Sales.

BACKGROUND:

We sent out 3 Requests for Bids and received 1 bid for consideration. The bid for the bus meets the required specifications. This is a planned purchase from the bus rotation to keep our fleet up to date. This is a used bus, but saves roughly $200,000 over purchasing a new one.

ALTERNATIVES:

Redo specs and rebid.

RECOMMENDATION:

1. Approve the bid from National Bus Sales
2. Deny the bid
3. Rebid the purchase

FISCAL NOTE:

This purchase has been budgeted for this fiscal year in account:

16 E 2700 730 0000 020 055 00 Purchase of Buses - Transportation.

Total - $252,650.00

ATTACHMENTS:

National Bus Sales Bid

Bid Tabulations
Activity Bus

Bid Opening: October 7, 2026 Bid 2026-04

Vendor	Bid
American Bus Sales	
Kansas Truck Equipment Inc.	
National Bus Sales	**$252,650.00**

RECOMMENDATION: To accept the bid from National Bus Sales in the amount of $252,650.00

Payment to be made from budgeted funds in account:

16 E 2700 730 0000 020 055 00 Purchase of Buses - Transportation

Bidders List
Activity Bus

American Bus Sales
Raymond Wakefield
12802 N. 103rd East Ave.
Collinsville, OK 74021
Raymond@americanbus.us

Kansas Truck Equipment
Brian Leis
1521 S. Tyler Rd.
Wichita, KS 67209
bleis@kansastruck.net

National Bus Sales
Clint Jackson
8649 S. Regency Drive
Tulsa, OK 74131
CLint@nationalbus.com

BID OPENING: 10/7/2026

GARDEN CITY PUBLIC SCHOOLS

Jessica Nothern, Chief Financial Officer
1205 Fleming St
Garden City, KS 67846
jnothern@gckschools.com
(620) 805-7007

BID FORM

By signing this bid form, the vendor certifies the equipment being offered meets or exceeds all requirements and conditions of the bid, special provisions and specifications. In compliance with the above and subject to all the conditions hereof, the undersigned offers and agrees to furnish all items upon which prices are quoted, at the price set opposite each item.

The undersigned certifies that no Federal, State, County or Municipal tax is included in the quoted prices and that none will be added. Public schools are EXEMPT. Exemption certificates will be provided upon request.

Pricing *(Unit Cost Including All Options and Less any Applicable Incentives)*

Vendor Name: National Bus Sales

(1) 50 Passenger Bus 3ALACXFC9LDLY9727 - 2021 Ultra Coachliner SE102

How long to receive these (calendar days): 60 days from submission

WE HEARBY AGREE TO FURNISH THE ITEMS ON WHICH PRICES ARE QUOTED ABOVE IN ACCORDANCE WITH ALL TERMS AND CONDITIONS PREVIOUSLY LISTED AND ANY ATTACHED SPECIFICATIONS.

Signature: Amanda Elston Date: 10-2-24

Printed Name: AmandaElston Title: Sales Admin Director

Email: amanda@nationalbus.com

Addenda to Bid (Y/N) N____

GARDEN CITY PUBLIC SCHOOLS

Jessica Nothern, Chief Financial Officer
1205 Fleming St
Garden City, KS 67846
jnothern@gckschools.com
(620) 805-7007

BID FORM

BIDDER IS AN INDIVIDUAL-

Name of Individual: _____

Name of Business: _____

Mailing Address: _____

Business Phone No.: _____

Business Fax No.: _____

BIDDER IS A PARTNERSHIP-

Name of Partnership: _____

Names of Principal Partners: _____

Mailing Address: _____

Business Phone No.: _____

Business Fax No.: _____

The full names of all partners: _____

BIDDER IS A CORPORATION-

Full Corporation Name: National Bus Sales

State of Incorporation: Oklahoma

Mailing Address: 8649 S Regency Dr. Tulsa, OK 74131

Business Phone No.: 918-224-1049

Business Fax No.: _____

Name & Address of Resident Agent: Ben Henshaw
8649 S Regency Dr. Tulsa, OK 74131

NATIONAL BUS SALES

QUOTE

Quote Date: 10/05/2026

PREPARED FOR
Shane Burns
Garden City USD 457
1205 Fleming St
Garden City, KS 67846
(620) 805-7000

QUOTE DETAILS
Bid Reference: BID-(1) 50 Passenger Bus
Stock #: PLY9727
FOB: Tulsa
Sales Contact: Greg Pylate
Email: gregp@nationalbus.com
Phone: (800) 475-1439 ext. 359

VEHICLE QUOTE

DESCRIPTION	PRICE
2021 Ultra Coachliner SE102 - White Exterior w/ Black Interior Cummins - Air brake - Approx. 50,000 miles - Has rear door RGB lighted ceiling - 2nd stereo w/ 4 drop down monitors - Ducted A/C	**$239,900.00** FOB Tulsa
Window Shades, Signature Brown Paint, Upgraded A/C, Ceramic Windows	**$12,750.00**
Sub-Total with upgrades:	$252,650.00
Deposit Due	$47,980.00
Remaining Balance	$204,670.00

TERMS & ACCEPTANCE

This quote is for the vehicle specified above. The bus will be titled using the business name and address shown above unless otherwise instructed in writing. A deposit of $47,980.00 or a purchase order is due to proceed. Full payment is due before the bus is delivered. This quote serves as notification of intent to purchase the bus as specified above.

Please email purchase documentation to gregp@nationalbus.com. Questions may be directed to (800) 475-1439 ext. 359.

Customer Acceptance Signature _____ Date _____

Sincerely,
Greg Pylate
National Bus Sales
gregp@nationalbus.com | (800) 475-1439 ext. 359

Warranty Information

Stock # PLY9727

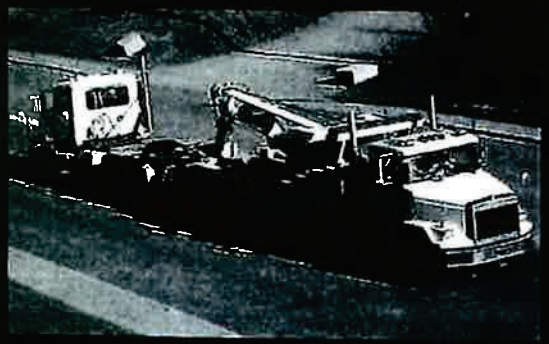
2021 Ultra Coachliner SE102

Manufacture Warranty – Expired

Extended Warranty & Pricing Available Upon Request

(Please see attached Warranty Coverage document)

An emergency supply of coolant, oil, water, or fuel will be delivered to your covered vehicle at place of disablement. You must pay the cost of the actual fluid or fuel when delivered.



If your keys are locked inside the covered vehicle, assistance will be provided to gain entry to the vehicle.

If a battery failure occurs, a jump-start will be applied to start the covered vehicle.

Just sign and go, there are no receipts to submit for reimbursement.

COMPASS HEAVY DUTY TRUCK & BUS PROTECTION PLANS ARE FULLY INSURED.

This is not a vehicle service contract. For complete details concerning terms, conditions, and exclusions, please refer to your vehicle service contract.

ADDITIONAL BENEFITS

Same Day Credit Card Payment: All covered claims which the administrator has authorized will be paid the same day by corporate credit card. Completed invoices must be received no later than 2PM.

Trip Interruption/Rental Assistance: Provides reimbursement up to $250 for meals and lodging expenses or rental Reimbursement incurred when a covered breakdown disables your vehicle more than 100 miles from your hometown.

Towing Reimbursement: If towing assistance becomes necessary due to the Breakdown of a covered component, towing costs not payable by insurance will be covered for up to three hundred seventy five dollars ($375) per occurrence. A paid in full, signed towing bill is required for reimbursement.

American Guardian Warranty Services, Inc. is an A+ rated member of the Better Business Bureau.

Provided and Administered by one of the following
American Guardian Warranty Services, Inc.
American Guardian Warranty Services, Inc. of Florida
(FL license #60116)
American Guardian Warranty Services, Inc. of Wisconsin

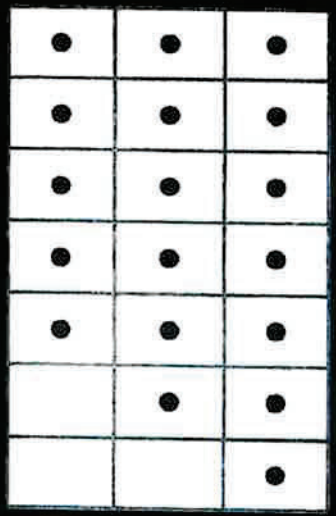
P.O. Box 768
Warrenville, IL 60555 | 800.579.2233 | agwsinc.com

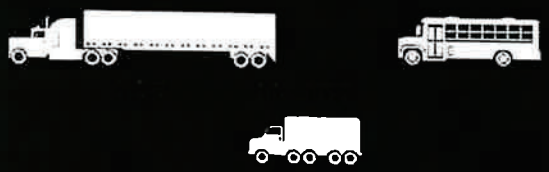
AGWS.CHDTBWAT.07.16

compass®
HEAVY DUTY TRUCK & BUS
PROTECTION

compass®
HEAVY DUTY TRUCK & BUS
PROTECTION

All parts listed are covered for the entire term of contract





COMPASS HEAVY DUTY TRUCKS PROTECTION COVERAGES

1. ENGINE : The following stated components are covered. The internal lubricated parts within the engine including:

- pistons
- piston rings
- wrist pins
- crankshaft
- rod and main bearings
- camshaft & cam bearings
- cam followers
- timing chain and timing gears
- timing chain tensioners
- turbo
- rocker arms
- intake and exhaust valves
- valve guides
- valve springs & valve retainers
- pushrods
- lifters
- turbocharger rotor/ turbine & housing
- water pump
- fuel injectors
- primary injectors

2. TRANSMISSION : The following stated components are covered. All internal lubricated parts of the manual or automatic transmissions, including:

- torque converter
- oil pump
- valve body
- governor
- bands
- drums
- planetaries
- sun gear
- sprag(s)
- shaft(s)
- bearings & related bushings
- shift rail
- forks
- synchronizers

3. DRIVE AXLE : The following stated components are covered. All internal lubricated parts including:

- output shaft
- bearings
- bushings
- gear sets
- axle & bearings
- carrier
- ring & pinion gears
- axle shaft

4. XLT PACKAGE (OPTIONAL) : The following stated components are covered:

- alternator
- starter & solenoid
- air compressor
- heater core
- blower motor
- radiator
- fan clutch
- charged air cooler
- fuel tank(s)
- engine oil pan
- radio (am/fm/cd)
- engine vibration damper

5. AFTERTREATMENT ASSEMBLIES (OPTIONAL) : The following stated components are covered:

- DPF, DPF doser injector & module, EGR valves & EGR cooler
- DOC & doser injector
- SCR
- DEF tank, dosing injection nozzle & dosing module
- 02 sensor & NOX sensor
- Aftertreatment control module

MEMORANDUM

TO: Board of Education
THRU: Josh Guymon, Superintendent
FROM: Steve Nordby, Assistant Superintendent
DATE: 10/7/2026
RE: **Board Policy GAN**

ISSUE & BACKGROUND:

Policy GAN is in need of revision to conform with current practices regarding two issues relating to staff travel:

1) The district no longer reimburses meals on a per-diem basis. Meals are reimbursed on an at-cost basis within established parameters.

2) Reimbursement for costs incurred by the district that cannot be recovered when an employee cancels approved travel or professional development. This provision has been a part of our Professional Development Handbook. Administration believes it should also be included in Board Policy.

ALTERNATIVES:

No alternatives applicable

RECOMMENDATION & FISCAL NOTE:

District administration believes adoption of these revisions will ensure the district's policy manual remains aligned with current practices regarding staff travel.

Administration recommends that the Board of Education adopt Policy GAN following a second reading.

ATTACHMENTS:

Policy GAN- Revised

Travel Expenses **GAN**

The board shall provide reimbursement for expenses incurred in travel related to the duties of the district's employees when approved in advance by the superintendent.

Mode of travel will be based on, but not limited to, the availability of transportation, distance and number of persons traveling together. A first-class air fare will be reimbursed only when coach space is not available.

Requests for reimbursement shall have the following attached: receipts for transportation, parking, hotels or motels, and other expenses for which receipts are ordinarily available. ~~Meals shall be reimbursed on a per diem basis~~. For the authorized use of a personal car, including approved travel between buildings, staff members shall be reimbursed at a mileage rate established by the board.

If an employee must cancel an approved professional leave or other approved travel, the employee will be expected to repay the district for all costs that cannot be reimbursed or refunded to the district, unless the superintendent or designee determines that the cancellation was due to circumstances beyond the employee's control or was made at the district's request. Repayment shall not be deducted from the employee's wages without the employee's written authorization. An appeal of this decision may be submitted in writing to the Professional Development Council.

Federal Programs

The board shall provide reimbursement for travel costs incurred in the course of performing services related to official business as a federal grant recipient. Employees and board members must have prior written approval from the federal awarding agency or pass-through entity to get reimbursement for expenses specifically related to a federal award.

For purposes of this procedure, travel costs shall mean the expenses for transportation, lodging, subsistence, and related items incurred by employees and/or board members who are in travel status on official business as a federal grant recipient.

All travel costs must be presented with an itemized, verified statement prior to reimbursement.

In addition, if these costs are charged directly to the federal award, documentation must be maintained that justifies that:

Participation of the individual is necessary to the federal award, and

The costs are reasonable, and consistent with the district's policy GAN.

Adopted: 6/15/92

Revised: 8/11/03, 8/14/17

Reviewed: 7/22/24

MEMORANDUM

TO: Board of Education
THRU: Josh Guymon, Superintendent
FROM: Steve Nordby, Assistant Superintendent
DATE: 10/7/2026
RE: **Board Policy JBCDA**

ISSUE & BACKGROUND:

Policy JBCDA outlines procedures for enrollment and transfer of students between buildings in the district. Current policy restricts parent-requested transfers to a period of 1 year, meaning parents would have to reapply for transfer each year to keep their students in a requested building.

Administration recommends allowing students who have received a parent-requested transfer to stay in the requested building for an additional year, pending the redrawing of school boundaries.

ALTERNATIVES:

No alternatives applicable

RECOMMENDATION & FISCAL NOTE:

District administration believes that allowing students who have been granted transfer will be more convenient for families and provide stability for buildings as they begin planning class schedules earlier in the spring/summer.

ATTACHMENTS:

Policy JBCDA- Revised

Student In-District Transfers **JBCDA**

If a parent/guardian wishes for his/her child to attend a school other than the school in the boundary which the family resides, a transfer request must be submitted to the Superintendent's Office. Parents/guardians are encouraged to complete transfer requests by May 20th. The application process opens on April 1st. Applications received after May 20th will be considered after all out-of-district transfer requests have been acted on due to the publication of open spots for out-of-district transfer students happening on June 1. Transfer requests will not be considered after September 20 of each school year, except for students who newly enroll in the district and reside outside their assigned attendance boundary. These students must submit a transfer request at the time of enrollment for consideration by the superintendent or designee. Requests submitted after completion of the enrollment process will not be considered.

These guidelines are intended to help promote an enrollment balance between classrooms across the district while allowing parents some choice in where their children attend school.

All transfer requests are considered on an individual student basis and, if approved, will be granted for one school year period, except as provided below. Transportation to the school to which a student is transferred is the responsibility of the parents.

Transition Provision for the 2027-2028 School Year. A student whose in-district transfer was approved for the 2026-2027 school year may continue to attend the transfer school for the 2027-2028 school year without submitting a new transfer request, provided that: (a) the student remains in good standing, as reviewed by district administration between May 20 and May 25, 2027; (b) the student continues to reside within the district; (c) the transfer school serves the student's grade level for the 2027-2028 school year; and (d) the parent/guardian has not requested that the student return to the student's boundary school. Students continuing under this provision shall be counted before available seats are determined for new transfer requests for the 2027-2028 school year. Continuation under this provision is for the 2027-2028 school year only, and does not create any right or expectation of continued attendance at the transfer school after that school year. This provision expires June 30, 2028.

Procedure for in-district transfer requests:

1. Students living within the school boundaries will initially be enrolled in their boundary school. If they are interested in attending a school other than their boundary school, parents are required to submit a transfer request to the Superintendent's Office. In-district kindergarten students wishing to transfer must complete the transfer request during online enrollment/registration. The Transfer Request Form can be found here.

2. The Superintendent or his designee will call the transferring school to check the students' record of good standing (inquire about any long-term suspensions or expulsions).

3. If the number of applications for a grade level in a school building is less than the number of available seats for that grade level in the school building, the transfer request will be approved as long as the student is in good standing.

4. If the number of applications for a grade level in a school building is greater than the number of available seats for that grade level in the school building, district administration shall randomly select students for approval in the order in which they are received. This process will be

completed annually between May 20 and May 25. Notification to families will be made before May 31st. Approved students must be students in good standing.

- Regardless of capacity determinations, the following categories of students shall be allowed to enroll as resident students if they are deemed to be in good standing by district administration:
    1. any child who is in the custody of the Department of Children and Families and who is living in the home of a nonresident student who transfers to the district or
    2. any nonresident student who has a parent or person acting as a parent is employed by the district, while the parent or person acting as a parent remains employed by the district.
- Priority in filling open seats if the number of requests are greater than the number of available seats:
    1. Any sibling of a student who was previously accepted as a transfer student
    2. Students of military personnel

5. The final decision will be made by the Superintendent. Requests made prior to May 20th will receive notification of a decision by May 30th from the Superintendent's Office.

DEFINITIONS:

- **Capacity -** The number of student seats used to guide transfer request decisions. Capacity is determined by the following factors:
    - Number of teachers at each grade level
    - Current student-teacher ratio
    - Projected enrollment shifts
    - Maintaining room for move-in students throughout the year
- **Good Standing -** Students meeting one or more of the following criteria shall automatically be deemed not in good standing:
    - Student failed to maintain a 90% attendance rate in the last school year, excluding excused absences under Board policy JBD and/or any relevant student handbook language;
    - Student or student's parent or person acting as a parent provided false or fraudulent information in the application process;
    - Student is currently under a period of suspension or expulsion from any Kansas school district, and such suspension or expulsion will not expire until after the next school year has begun;

- Student has had three or more out-of-school suspensions in the previous school year, excluding suspensions a manifestation determination determined to be a manifestation of the student's disability or a failure on the part of school staff to implement an individualized education program, Section 504 plan, or behavior intervention plan; or
- Student has been given a long-term suspension or expulsion in the current school year.
- Student must not have any outstanding school fees.
- EXCEPTION: If the student has a disability, the student's ability to meet the expectations shall be considered prior to denying the transfer or continued enrollment.

Adopted: 3/3/25

Revised: 7/24/25; 5/11/2026