

Special Meeting  
Thursday, May 18, 2023 6:00 PM

Teaching & Learning Center, Becker High  
School  
12000 Hancock Street  
Becker, MN 55308

## **Agenda**

1. PROCEDURAL ITEMS
  - 1.A. Call to Order
  - 1.B. Pledge of Allegiance
  - 1.C. Agenda
2. SPONSORSHIP/ADVERTISING AGREEMENT
3. ADJOURN

## SPONSORSHIP/ADVERTISING AGREEMENT

This Sponsorship/Advertising Agreement (“Agreement”) is entered into by and between Independent School District No. 726, Becker Public Schools (“School District”), located at 12000 Hancock Street, Becker, Minnesota 55308 and Northern Metals, LLC with offices located at 12432 Energy Drive, S.E., Becker, MN 55308 (“Sponsor” or “EMR”), an affiliated entity of (EMR USA Holdings, Inc.), together referred to as the “Parties.”

WHEREAS, the School District seeks to purchase and install a digital scoreboard at its sports stadium located at or about Becker Public Schools, 12000 Hancock Street, Becker, MN 55308 (the “Stadium”); and

WHEREAS, the Sponsor seeks to enter into an Agreement to sponsor the Stadium and have advertising opportunities.

NOW, THEREFORE, in consideration of the sponsorship provided herein, the mutual covenants, terms and conditions, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** This Agreement shall be effective on the date of full execution by the Parties and shall remain in force for five (5) years following the effective date, unless terminated by either party or by mutual agreement as set forth herein.
2. **Sponsorship.** During the term of this Agreement or until the date of termination, whichever occurs first, the Stadium shall be identified by the School District as the “Dwight Lundeen Stadium sponsored by EMR.” The School District shall make reasonable efforts to identify the Stadium by that name in communications or materials disseminated by the School District, including:

(a) Announcers during games stating, "Welcome to the Dwight Lundeen Stadium sponsored by EMR."

(b) Announcing the location of the concession stand at least four times during each game, including identifying the Stadium as the "Dwight Lundeen Stadium sponsored by EMR."

(c) Hand stamps for patrons who enter games shall include "DL Stadium sponsored by EMR."

(d) A coin toss at the homecoming game will be preceded by an announcement "Welcome President Scott from EMR for the coin toss at midfield."

3. **Advertising.**

(a) The digital scoreboard at the Stadium shall include signage on back and front that states: "Sponsored by EMR."

(b) Signage shall be placed on each fence opposite the scoreboard with the Sponsor's logo and name (EMR) and any advertising/tag line(s).

(c) The School District shall run a Sponsor's commercial at pregame and/or half-time (dependent on the length of the commercial) a minimum of three times at each event at the Stadium.

(d) This Agreement does not create an exclusive advertising right for the Sponsor. However, the School District shall include the Sponsor in any invitations or requests for proposals extended by the School District.

All advertising shall comply with School District policies and shall be under the control of the School District. The School District shall at all times retain final authority to accept or reject advertising submitted by the Sponsor, provided, however, that all advertisement of EMR name

and logo shall be done in accordance with the Sponsor's design and specifications. Signage, advertising content, installation and removal shall be at the School District's expense up to a maximum aggregate of \$20,000 during the term of this Agreement. The Sponsor shall be directly responsible to pay such costs once they exceed \$20,000. Signage will be installed at least thirty (30) days before the opening home football game of the season, if possible, unless the Sponsor or School District is in default and/or has served written notice of termination pursuant to Section 6 of this Agreement. The School District shall have no obligation to display signage or other advertising containing the Sponsor's name or other advertising in violation of applicable law, including, without limitation, city ordinances.

4. **Sponsorship Fee.** The Sponsor shall pay the School District a total sponsorship fee of \$300,000 (the "Fee"). An initial payment of \$60,000 shall be paid within ten (10) days after full execution and approval of this Agreement. The remainder of the Fee will be paid in annual installments of \$60,000 due on or before June 1 of each subsequent year of this Agreement. Checks shall be made payable to Independent School District No. 726 and shall be sent to or delivered to the Superintendent at the School District's address on or before the due date.

5. **Default and Termination.**

A. **Default by Sponsor.** The following shall constitute a default by the Sponsor:

- (i) The Sponsor fails to fulfill any of its monetary obligations under this Agreement for thirty (30) days after receiving written notice from the School District;
- (ii) The Sponsor fails to perform or observe any of its non-monetary obligations or agreements for thirty (30) days after receiving written notice from the School District, provided that if such performance or observance cannot reasonably be accomplished within the thirty (30) day period, a default shall not be deemed to have occurred if the Sponsor begins to cure the breach

within the thirty (30) day period and thereafter diligently and in good faith continues to cure the breach until cured;

- (iii) The Sponsor makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act;
- (iv) A receiver or trustee is appointed for the Sponsor or the Sponsor's property;  
or
- (v) The Sponsor ceases or takes material steps to cease to carry on its business.

In the event of the Sponsor's default, the School District has the right to take the following actions, which are not exclusive:

- (i) Remove all signage or materials containing or displaying the Sponsor's name, wherever located on District real and personal property with associated costs to be billed to the Sponsor;
- (ii) Seek and obtain injunctive or other legal relief including but not limited to specific performance of the terms of this Agreement; and/or
- (iii) Immediately terminate the Agreement by written notice to the Sponsor.

**B. Default by School District.** The following shall constitute a default by the School District:

The School District fails to perform or observe any of its non-monetary obligations, conditions or agreements to be performed or observed under this Agreement for thirty (30) days after written notice from the Sponsor; provided that if such performance or observance cannot reasonably be accomplished within the thirty (30) day period, a default shall not be deemed to have occurred if the School District begins to cure the breach within the thirty (30) period and thereafter diligently and in good faith continues to pursue the cure of the breach until cured.

In the event of the School District's default, the Sponsor has the right to take the following actions, which are not exclusive:

- (i) Require the School District to remove all signage or materials displaying the Sponsor's name, wherever located on School District real and personal property, and require the School District to cease and desist any use of the Sponsor's name;
- (ii) Seek and obtain injunctive or other legal relief including but not limited to specific performance of the terms of this Agreement; and/or
- (iii) Immediately terminate this Agreement by written notice to the School District.

The foregoing remedies do not include a right of the Sponsor to enter School District property without permission; therefore, any removal of signage or other Sponsor property by the Sponsor must be arranged for and under the supervision of the School District.

C. **Costs.** The Parties agree that if any Party is successful in a court of competent jurisdiction in obtaining legal or equitable relief arising from a default by the other Party, the successful Party shall be entitled to recover its reasonable costs, fees and legal expenses.

6. **Termination for Reasons Other than Default.**

A. **School District.** The School District may choose to terminate this Agreement without cause if deemed in the best interests of the School District with sixty (60) days written notice to the Sponsor. In addition, if, in the School District's judgment, the rights granted the Sponsor will have a negative impact on the image or reputation of the School District, it may immediately terminate this Agreement with written notice to the Sponsor. In the event the School District exercises its right of termination under this section, the School District will refund any amounts prepaid by the Sponsor beyond the sixty (60) day notice requirement on a pro-rata basis.

B. **Sponsor.** The Sponsor may terminate this Agreement if deemed to be in the best interest of the Sponsor with 180 days' written notice to the School District. Such

notice must be received at least 180 days prior to the due date for an annual installment. The Sponsor's sponsorship rights and advertising rights shall cease immediately upon receipt of the notice and the School District shall remove all signage or other materials displaying or containing the Sponsor's name, wherever located on School District real and personal property.

C. **Mutual Consent.** This Agreement may be terminated or modified by written agreement of both Parties, as authorized by the School Board of the School District and a duly authorized representative of the Sponsor.

7. **Miscellaneous.**

A. **Nature of the Agreement.** This Agreement does not constitute a lease or license. This Agreement does not form a partnership between the Parties, nor does it create any right, title, interest or claim of ownership of the Sponsor's name or the School District's property.

B. **Assignment.** The Sponsor shall not assign, transfer or convey this Agreement or its rights with any person or entity without the previous written consent of the School District.

C. **Force Majeure.** Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if the default or delay is caused, directly or indirectly, from a cause beyond the Parties' reasonable control and without the fault or negligence of the Party claiming excusable delay or failure to perform, such as acts of God, acts of war or terrorism, fires, storms, floods, epidemics and pandemics, civil disorders, or other such similar causes. The Party whose performance is prevented or delayed shall promptly notify the other Party of the occurrence of the Force Majeure event.

This provision does not prohibit the Parties from exercising their respective rights to terminate this Agreement.

D. **Responsibility for Own Acts.** Except as otherwise provided herein, each Party shall be responsible, to the extent required by law, for its own acts or omissions and for any and all claims, liabilities, injuries, suits, demands, and expenses which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that Party or its employees or representatives in the performance or omission of any act or responsibility of that Party. This provision does not constitute a waiver of the statutory limits on school district liability or any of the immunities and defenses applicable to Minnesota school districts.

E. **Retention of Rights.** The only rights granted to the Parties are those described in this Agreement. The Sponsor hereby retains and does not grant any rights to the School District to use any of its logos, symbols, names or other marks or intellectual property, except for use as described in Sections 2 and 3 of this Agreement.

F. **Choice of Law and Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Minnesota. Any suit or action brought in connection with this Agreement shall have venue in Sherburne County, Minnesota.

G. **Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement. All signatures need not be on the same counterpart.

H. **Notices.** Any notices or communications required or permitted to be given pursuant to this Agreement shall be in given in writing and delivered in person or by

certified mail, return receipt requested to the Parties as indicated below. A Party may change its address by giving written notice to the other Party.

Independent School District No. 726  
Becker Public Schools  
Attn: Superintendent of Schools  
12000 Hancock Street  
Becker, Minnesota 55308

Northern Metals, LLC  
Attn: Scott Helberg  
12432 Energy Drive, S.E.  
Becker, MN 55308

With a copy to: [USALegal@emrgroup.com](mailto:USALegal@emrgroup.com).

I. **Authority.** Each Party attests that it has full power, authority and legal right to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly authorized by requisite action by the School Board of the School District and the EMR authorized representative of Northern Metals, LLC. Upon execution and delivery by each Party of this Agreement, it will be a valid and binding obligation of each Party enforceable with its terms.

J. **No Construction Against Drafting Party.** Neither this Agreement as a whole nor any provision contained herein shall be interpreted for or against either Party solely because that Party or the Party's legal representative drafted the provision.

K. **Headings.** The headings and sections of this Agreement are for convenience only and shall not affect the interpretation of any provision hereof.

IN WITNESS WHEREOF, the Parties hereby execute and attest to this Agreement by their duly authorized representatives.

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

Independent School District No. 726

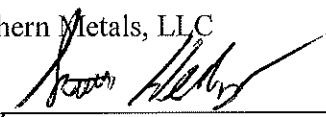
By \_\_\_\_\_

Its \_\_\_\_\_

Approved by School Board  
Action on 05/18/2023

Dated: 5/12/23

Northern Metals, LLC

By 

Its C.O.O.